



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 21 मई, 2014 / 31 वैशाख, 1936

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश बारहवीं विधान सभा

अधिसूचना

शिमला—171004, 20 मई, 2014

संख्या: वि०स०:-विधायन-शपथ/1-2/2013.—भारतीय संविधान के अनुच्छेद 188 के अनुसरण में हिमाचल प्रदेश विधान सभा के लिए 37—सुजानपुर निर्वाचन क्षेत्र से उप—चुनाव में निर्वाचित सदस्य, श्री नरेन्द्र ठाकुर ने राज्यपाल महोदया द्वारा इस प्रयोजन हेतु जारी आदेश संख्या वि०स०—विधायन—आदेश/1—50/83—1, दिनांक 19 मई, 2014 द्वारा नियुक्त, अध्यक्ष, हिमाचल प्रदेश विधान सभा के समक्ष दिनांक 20 मई, 2014 को (पूर्वाहन) शपथ ग्रहण की।

(सुन्दर सिंह वर्मा)
सचिव,
हि० प्र० विधान सभा ।

HIGHER EDUCATION DEPARTMENT**NOTIFICATION**

Shimla-2, the 19th May, 2014

No. EDN-A-Ka(3)-12/2009-L.—The Governor, Himachal Pradesh, in exercise of the powers conferred upon her under section 4(2) of the Himachal Pradesh Private Educational Institutions(Regulatory Commission) Act, 2010 (Act No. 15 of 2011) and on the recommendations of a Search Committee, is pleased to appoint Er. Sunil Dutt Sharma, r/o House No.129, Ward No.6, Gandhi Nagar, Hamirpur, Himachal Pradesh, as Member, Himachal Pradesh Private Educational Institutions Regulatory Commission for a period of three years from the date of his joining as such or until he attains the age of 65 years, whichever is earlier.

By order,
Ali R. Rizvi,
Pr. Secretary(Education).

No. EDN-A-Ka (5)-2/2013- ICFAI.
Government of Himachal Pradesh,
Department of Higher Education.

From

The Pr. Secretary (Education) to the
Government of Himachal Pradesh.

To

The Chief Administrative Officer,
Institute of Chartered Financial Analysts of India
(ICFAI) University, HIMUDA Education Hub, Kalujhanda,
Barotiwala, Baddi, District Solan- 174 103.

Shimla-171002, the 30th April, 2014.

Subject: Notice.

Sir,

I am directed to refer to your letter no. IU-HP/Policy (Part-II) dated 17th April, 2014 on the subject cited above and to inform you that the Government has decided that Institute of Chartered Financial Analysts of India (ICFAI) University will ensure to comply with the following preventing measures at the earliest;

- (i) that the Vice Chancellor and Registrar are appointed by 31st May, 2014;
- (ii) that no financial liabilities of the Society is transferred to the University; and

(iii) that efforts are made by the University to ensure that there is a sizeable increase in number of students admitted.

In view of the above you are requested to take immediate steps to comply with above directions of the Government and send action taken report to this department at the earliest.

Yours faithfully,
Sd/-
Under Secretary(Education).

**HIMACHAL PRADESH JUDICIAL ACADEMY
Curzon House, Boileauganj, Shimla – 171005**

CHARGE RELINQUISH REPORT

Dated: 19th May, 2014

No. HPJA/Prsnl/2013- 2445-2486.—Pursuant to Hon’ble High Court of Himachal Pradesh Notification No. HHC/GAZ/14-53/74-V dated 17-05-2014, I, Yashwant Singh Chogal, do hereby relinquish the charge of the post of Director, H.P. Judicial Academy today the 19th day of May, 2014 (afternoon).

Sd/-
(YASHWANT SINGH CHOGAL),
Joint Director,
H.P. Judicial Academy, Shimla-5

**HIMACHAL PRADESH JUDICIAL ACADEMY
Curzon House, Boileauganj, Shimla – 171005**

CHARGE ASSUMPTION REPORT

Dated: 19th May, 2014

No. HPJA/Prsnl/2013- 2550-90.—Pursuant to Hon’ble High Court of Himachal Pradesh Notification No. HHC/GAZ/14-53/74-V dated 17-05-2014, I, Rakesh Kainthla, do hereby relinquish the charge of the post of Director, H.P. Judicial Academy today the 19th day of May, 2014 (afternoon).

Sd/-
(RAKESH KAINTHLA),
Director,
H.P. Judicial Academy, Shimla-5.

HIMACHAL PRADESH JUDICIAL ACADEMY
Curzon House, Boileauganj, Shimla – 171005

CHARGE RELINQUISH REPORT

Dated: 19th May, 2014

No. HPJA/Prsnl/2013- 2488-2529.—Pursuant to Hon'ble High Court of Himachal Pradesh Notification No. HHC/GAZ/14-53/74-V dated 17-05-2014, I, C.B. Barowalia, do hereby relinquish the charge of the post of Director, H.P. Judicial Academy today the 19th day of May, 2014 (afternoon).

Sd/-
(C. B. BAROWALIA),
Director,
H.P. Judicial Academy, Shimla-5.

THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

EOI No: 1/2014

Dated: 20.05.2014

**INVITATION FOR EXPRESSION OF INTEREST FOR
SCANNING/DIGITIZATION OF COURT RECORD**

The High Court of Himachal Pradesh invites Expression of Interest for Scanning/Digitization of approximately 1.5 crore pages of judicial record. The scope of work broadly is as below:

- Scanning, Indexing, Storing, Archiving & Retrieval of court record in digital form in secure manner.
- Application Software & Methodology to be adopted for seamless integration with existing workflow based on Case Management Information System (CMIS) Software developed using My SQL/Linux/Apache/PHP (LAMP technologies).
- Imparting of training to High Court Staff on Scanning, Indexing, Storing, Archiving, Retrieval and Printing process.

Only interested companies/firms having relevant experience in this area will be eligible for short listing.

The details are available in the document entitled as Invitation for Expression of interest for scanning /digitization of Court record, posted on official website of this High Court <http://phighcourt.gov.in> and also may be obtained from this Court during office hours between 9:45 am to 4:45 p.m. on any working day. The person(s) concerned who satisfies the eligibility criteria may submit the application(s) either personally or through post/courier along with profile

and past experience to the **Registrar General, High Court of Himachal Pradesh** so as to reach on or before **18.06.2014 at 4.45 PM.**

Registrar General
High Court of Himachal Pradesh
Shimla

THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

EOI No: 1 / 2014

Dated: 20.05.2014

INVITATION FOR EXPRESSION OF INTEREST FOR SCANNING/DIGITIZATION OF COURT RECORD

1. Sealed Expression of Interests (EOIs) are invited for Scanning / Digitizing of about 40 years Old Record of High Court of H.P. i.e. approximately 1.5 crore pages on actual work basis and/or to scan and digitize record of current and pending Case files including solution of cases to be filed fresh.
2. The person should be able to scan and digitize the entire record in about 2 years with minimum commitment of pages each day, as may be mutually agreed in the space to be made available to such concern for the purpose of scanning/digitization.
3. The person is to create Scanning/Digitizing, Indexing, Storing and Retrieval facility set up.
4. The person must have adequate experience of having Scanning/digitizing, indexing, storing and providing retrieval facility for documents and must provide proof for this.
5. The person must attach documents as proof to show that similar or related projects having been completed successfully and Balance Sheets of the past three year period with special reference to turn over, if any, from scanning and/or digitization of records.
6. A demonstration of the proposed solution shall have to be given to the Hon'ble Steering Committee (eCourts) of the High Court and a Committee of other experts, if formed. Based on the demonstration of the solutions and discussions, it shall be decided whether commercial offers be called from the person whose solution is found suitable or fresh tenders are to be called after finalization of the tender documents.
7. The person may suggest any addition/alteration to the scope of the work and/or terms & conditions depending upon their experiences.
8. The interested persons can inspect the records lying in the Record Room(s) after contacting Deputy Registrar (Digitization) on Telephone No. 0177-2888211 during working hours of the Court.
9. The Registrar General shall reserve the right to reject any "expression of interest" without assigning any reason.
10. The "expression of interest" received after due date and time i.e. 18.06.2014 at 4:45 p.m., shall not be entertained.

TENTATIVE SCOPE OF SCANNING WORK

1. Batch Processing, Archiving (Scanning and storing intoimage/digital form) and Retrieval. The papers to be scanned will be mostly of Legal Size and written on one side. It can be of other sizes and printed/typed or handwritten on both sides as well. The condition of some of the case record may not be very good being old. The person shall come up with technical solution for scanning/digitization of brittle record as well.

2. The process may include:
 - (i) Receiving files by the person from High Court staff.
 - (ii) Preparing the files for scanning/digitization purpose, i.e., removal of tags, pins, etc.
 - (iii) The person shall also include, in the proposal, to shred the case record using Shredding Machines as some part of the record may be required to be discarded/destroyed before or after the scanning / digitization.
 - (iv) Scanning and Storing the Data in Scanned form with mirroring facility and one additional back up on hard disk drive.
 - (v) Indexing the stored scanned data. Following are the proposed Indexing Parameters:
 - Case Type, Number, Year
 - Petitioner Name(s)
 - Respondent Name(s)
 - Advocate Name(s)
 - District Name
 - Latest Case Status
 - List Type
 - Category
 - Bench Type
 - General Remarks
 - Type of Document
 - Date of Document
 - Keywords
 - Sections
 - Date of Storage
 - User, who entered it
 - (vi) Handing over the files back to the High Court staff in their original condition and or after discarding/destroying specified record.
 - (vii) Handing over the scanned data on appropriate electronic media to High Court.
 - (viii) Providing licensed updated Application Software to High Court.
 - (ix) Transferring the stored scanned data on the hard disk or High Court's Servers for future retrieval.

- (x) Imparting of adequate training to the staff of this Court for (1) archival (scanning and storing) (2) Indexing (3) retrieval and printing.
- (xi) Full maintenance and support for one year after the completion of the work.
3. If the person is already doing the Scanning/digitizing work on 'job work basis' in any Government department or any reputed private firm, then the name, address and telephone number of the same may be mentioned.
4. The High Court, in its discretion, reserves the right to reject or accept any or all the tenders partly or completely at any time without assigning any reason therefor.
5. Presently the High Court is using My SQL RDBMS (Relational Database Management Systems) and the software to be developed by the person is to ensure seamless integration with the existing workflow based system in use by the High Court.
6. The work at the discretion of the High Court, may be awarded to one or more persons, as the case may be.
7. The person will execute an appropriate agreement, on the agreed terms & conditions with the High Court and also furnish performance guarantee equivalent to 5% of contract value to be valid for one year after the successful completion of the project.
8. The person should submit the Proposed Technical Details as per Annexure 'T' attached herewith as far as possible. In case, the person is found not suitable in Technical Details, its financial bid need not be called.
9. The High Court will deal with the person directly and no middlemen / agents / commission agents etc. should be asked by the person to represent their cause.

TENTATIVE TERMS & CONDITIONS

- 1) The person furnishing the Technical interest shall have to compile and make an instruction manual for Scanning/digitizing, storing and retrieving operations and the same shall be provided to the High Court for use of its staff or carrying out the operation of Scanning/digitizing and retrieval.
- 2) The person shall have to arrange its own staff for the entire scope of work. The High Court would neither bear any expenses nor accept responsibility for the same and there would be no relationship of employer and employee between the High Court and the staff of the person. Likewise, the High Court shall not be a principal employer of the employees employed by such person for the purpose of Employees' Compensation Act.
- 3) The person should have its own sufficient infrastructure and qualified professionals at Shimla.
- 4) The High Court reserves the right to deny entry into its premises to any staff member of the person, if so deemed appropriate by it.
- 5) The person will ensure that the staff engaged is disciplined and maintains full decorum of the Court.
- 6) The Hardware for the project will be provided by the High Court, as detailed in Annexure 'II'. The person is to suggest any other mandatory hardware or ICT infrastructure required for

execution of the project. Once the hardware is installed, the firm will not take any storage device away, without permission of the High Court.

7) The successful person shall undertake the job of Scanning/digitizing only in the High Court premises.

8) Continuance of the contract shall be subject to satisfactory performance of the person and it may be cancelled at any time without assigning any reason for the same. The decision of the Registrar General, High Court of Himachal Pradesh, Shimla in this regard shall be final and binding.

9) The person may be allowed to do the scanning/digitization work on all working days. The timings and work schedule will be decided, mutually between the person and High Court but in all probability it must coincide with office timing of the High Court i.e. 9:45 a.m. to 4:45 p.m.

10) The High Court will provide the files to the authorized representative of the person supervising the Scanning/digitizing work, on day to day basis under proper receipt and it will be the responsibility of the person to accomplish the task of scanning/digitization after following all the processes, namely Unbundling, Rebundling, Super Indexing, Scanning/digitizing, Splitting & Merger, Page numbering, Storing, Retrieval, etc.

11) It will be the responsibility of the person to return the files to High Court staff under acknowledgment in the same shape and condition it was taken.

12) The person will ensure that the documents/files handed over to it are kept in proper condition and no document is soiled/lost/misplaced/damaged.

13) In case the person finds any original document which is in a very bad condition, it will make its best efforts to take out better print (either by typing on a separate sheet of paper or taking out a better photocopy thereof) and then put the said data in the relevant database. The original papers shall however be retained in the main file.

14) The person, after successfully storing the data on its own computer shall transfer the same on the computer to be provided by the High Court along with the documentation, technical and user manual. However, the person shall be fully responsible for the proper archiving, storing and retrieval of the Scanned/digitized data for a minimum period of one year after completion of its work on its hardware. The High Court may seek suggestion of the person about the configuration and the number of computers and other hardware for Archival and Retrieval of digitized data, including back up.

15) Complete secrecy and confidentiality is required to be maintained by the person and its employees.

16) The person shall not be allowed to take away any file/record etc. either in the shape of hard copy or soft copy and the work is to be carried out in the High Court premises itself.

17) The person has to develop and supply two copies each of the software products along with the source code. The person has to develop the software specific to High Court needs, with water marking and digital signature facilities. Such application software will be well integrated with CMIS software, already implemented and in use in this court.

18) The person using the integrated software for Scanning/Digitization and Document Management System shall provide its license to the High Court.

- 19) The software module should have multiple accesses with security features, with facility for updation of information.
- 20) The High Court of Himachal Pradesh through the Registrar General will have copyright on the product, format, concept layout and design. The High Court will have exclusive rights to use it anywhere, in any manner.
- 21) It shall be the duty of the person to have the licensed software updated from time to time and provide all possible assistance/help during the scanning/digitization work.
- 22) Time is the essence of the contract and the person shall adhere to the time schedule, contracted page work and deadline as prescribed by the High Court for execution of the work.
- 23) On the completion of the work, the person shall hand over the latest licensed updated software and also the database to this Court, which shall become the property of High Court of Himachal Pradesh for all intents and purposes.
- 24) Licensed copy of the application software and database design as may be developed by the person or its employees for and during execution of the work shall vest in High Court of Himachal Pradesh and the person shall execute necessary documents for the same and also get an assignment from its employees, in favour of High Court.
- 25) The data is to be stored by way of images in Searchable Portable Document Format with adequate resolutions to ensure the readability and ease in retrieval. The images so stored in the database should be properly indexed as per the requirements of High Court and should be capable of adding more images, at later stage if need be, in an old stored file. The data so stored shall be in a non-editable form.
- 26) The database created by the firm shall be retrievable in Portable Document Format by the user. Necessary training for the retrieval of the database for the Scanning/digitizing, storing, organizing and retrieval are to be imparted to the staff of this Court.
- 27) The High Court of Himachal Pradesh, in consultation with the person, will finally decide the retrieval parameters.
- 28) All Scanned/digitized files will be stamped and duly signed by the user indicating that the "**FILE IS SCANNED/DIGITISED AND DULY RECONSTRUCTED**" and the person will be fully responsible for any loss/damage of any document.
- 29) At the end of every quarter the firm will hand over complete Scanned/digitized data to the High Court.
- 30) If it is found at any time that the Scanning/digitizing, Indexing, storing or retrieval has not been done in accordance with the agreed terms and conditions, the High Court shall be entitled to withhold further payment of the firm and also to recover the payment already made.
- 31) The staff of the High Court will do random checking of the work being done by the person and in the event of the person not executing or completing the minimum agreed volume of work, the High Court may impose suitable penalty per unfinished page in addition to the recovery of other losses and damages that may suffer, besides terminating the contract and getting the work executed at the cost and responsibility of the person.
- 32) The High Court shall provide space for work, electrical supply, table, chairs, shredders and file racks etc. as per requirement but the person will ensure that the space and other facilities provided to it by the High Court are not misused in any manner.

33) Payment for scanning/digitization work done under the contract shall be made on quarterly basis, subject to statutory, other deductions and penalties and damages, if any, levied and recoverable under the contract for the work done as per agreed terms to the satisfaction of High Court. The person will be responsible for liabilities of all kind including local and other taxes.

34) The digitization software should be web enabled.

35) The Scanned/digitized record will be the property of the High Court of Himachal Pradesh. The person shall have no right, title or interest in it and shall not use it in any manner.

36) In the event of termination of Contract, High Court shall be entitled to forthwith forfeit the amount of performance guarantee either full or in part apart from taking such legal remedies as are available in law. The person shall thereupon hand over the Judicial and other records, which are in its possession. The person shall not be entitled to remove the digitized data, which will be the property of High Court of Himachal Pradesh.

Interested persons may send their details in sealed covers subscribing on the top of outer cover as “**TECHNICAL INTEREST**” addressed to the **Registrar General, High Court of Himachal Pradesh** so as to reach on or before **18.06.2014 at 4.45 PM**. The Technical Interest will be opened in the Office of Registrar General, High Court of Himachal Pradesh, Shimla in the presence of person(s) or their representatives, who wish to remain present, at **11.00 AM.** on **20.06.2014.**

*Registrar General
High Court of Himachal Pradesh
Shimla.*

ANNEXURE-I

- (i) Description/Name of the vendor (including legal status, ownership etc.) (ii) The person's understanding of the project requirements and the proposed total solutions.
- (iii) Methodology to be used for Scanning/digitizing. Separate Methodology may be specified for scanning/digitization of old record and fresh-filed cases.
- (iv) What would be the output/day in terms of number of pages that can be Scanned/digitized, indexed, stored and retrieved?
- (v) Maintenance and technical support services to be provided after supply of the software.
- (vi) Number of technical persons to be deputed by the person for the work (with details of their educational qualifications, experience, functions, etc.)
- (vii) Number of non-technical persons to be deputed by the person (with details of their educational qualifications, experience, functions, etc.)
- (viii) Other Hardware equipment the person propose to provide.
- (ix) What is the Software the person propose to use for scanning/digitizing, indexing, storing and retrieval?
- (x) How much space the person may require to execute the work?

- (xi) How long the person estimate to complete the work in all respects?
- (xii) What facilities the person expect from the High Court in executing the work?
- (xiii) List the clientele of the person with amount of work completed, their addresses and contact person's details.
- (xiv) Main features of proposed solution and any area of risk.
- (xv) Details of LAN to be established by the person.
- (xvi) Steps to prevent accidental or intentional destruction of software and data.
- (xvii) Any other relevant information which the person considers necessary for such type of projects.

ANNEXURE-II

Item Head Code	Item Name	Quantity	Configuration
1.	Desktop PCs	12	Intel i-5 Processor with 4GB RAM and 500 GB HDD
2.	Scanners	12	KODAK i1420

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 3rd May, 2014

No. Sharm (A) 7-1/2005-IV (Award).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment, Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1.	101/2009	S/Shri Pushpa Devi V/s M.D. M/s Hemma herbs Pvt. Ltd, 39 Industrial Area Barotiwala Distt. Solan.	17-01-2014
2.	117/2010	Prem Singh V/s DFO Shimla.	03-03-2014
3.	97/2009	President General Secretary V/S M/s Gabrial.	03-03-2014
4.	43/2013	Surinder Singh V/S Sh Bali Ram & Others.	15-03-2014
5.	39/2013	Kuldeep Kumar V/s -do-	15-03-2014
6.	110/2009	Rajit Kumar V/s M.D.Cosmo Frerriters Ltd. Jabli.	13-03-2014
7.	74/2010	Shyam V/s Mount Everest Mineral Water Ltd.	21-03-2014
8.	138/2004	Dola Ram V/s HP Khadi.	31-03-2014

9.	112/2009	Deep Ram V/s HPPWD Kumarsain	01-04-2014
10.	114/2014	Tunnu Lal Yadav V/s Sidhartha Super Spining Mills Nalagarh.	10-04-2014

R. D. DHIMAN,
Pr. Secretary (Labour & Employment)

**IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA**

Ref No. 138 of 2004.
Instituted On: 6.12.2004.
Decided On: 31.3.2014

Dola Ram S/o Shri Lekh Ram, Village Nadohat, P.O Hinri, Tehsil Sunni, District Shimla,
HP . . . Petitioner.

Versus

HP Khadi and Village Industries Board, Cleave Land, Shimla through its Chief Executive Officer . . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Satyen Vaidya, Advocate.
For respondent: Shri Susheel Parihar, Advocate.

AWARD

The reference for adjudication is as under:

“Whether the removal of services of Shir Dola Ram S/o late Shri N.R Sharma by the Chief Executive Officer, HP Khadi & Village Industries Board Cleave Land, Shimla 171004 w.e.f. December, 1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits Shri Dola Ram workman is entitled to?”

2. The case of the petitioner is that, initially, from October, 1993 to December, 1993, he worked as daily waged clerk/helper in the establishment of the respondent. Thereafter, he continued to work there from September, 1994 to November, 1996. Since, he had remained under mental depression from October, 1996 to March, 1998 and also underwent treatment from psychiatry department of Indira Gandhi Medical College, Shimla, for this reason, he could not work during the said period. The fact regarding his being indisposed, due to mental depression, was within the knowledge of the respondent. W.e.f 20.4.1998, he was again allowed to work, as daily wager, initially till 19.6.1998 and thereafter till 31.12.1999. However, for the period 20.6.1998 to 2.10.1998 and 1.10.1999 to 31.10.1999, he was not paid any salary/wages on the pretext that sanction in this regard had not been accorded by the appropriate authority of respondent. Since, during the said period, he had worked, he was entitled to be paid full permissible wages. It is further alleged that during the period w.e.f. 20.4.1998 to 31.12.1999, he had been discharging the duties of salesman and clerk as per the satisfaction of the respondent. He had also completed 240 days. It is further averred that w.e.f. 1.1.2000, he was not allowed to work by the respondent

without any justifiable cause. In this way, his retrenchment by the respondent was against the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act). He was also not issued any notice prior to his retrenchment. No wages were even paid to him in lieu of the statutory notice. The respondent had neither paid him retrenchment compensation nor served the appropriate government with prescribed notice prior to his retrenchment. It is further averred that he was also entitled for regularization of services except for the period of his illness. After his retrenchment, the respondent has given employment to other persons without considering his lawful claim. Against this back-drop a prayer has been made for declaring his retrenchment w.e.f. 1.1.2000, to be illegal and also to re-employ/re-engage him along-with back wages and other consequential reliefs.

3. The petition has been contested on having raised various preliminary objections including estoppel and that the petitioner has suppressed material facts from this Court. On merits, it has been stated that the petitioner had been engaged as salesman, on daily wages basis, in October, 1993 and worked upto Jan., 1994. Thereafter, he was again engaged as helper in September, 1994 and worked till November, 1996, as per the requirement of the respondent. It has been specifically denied that he had remained under mental depression from December, 1996 to March, 1998. The respondent had also not been informed by the petitioner regarding his alleged illness. In April, 1998, he had been engaged as daily paid clerk and worked upto June, 1998. Thereafter, he was engaged in October, 1998 and worked till Feb., 1999. It has been denied that the petitioner is entitled for payment of salary w.e.f. 20.6.1998 to 2.10.1998 and 1.10.1999 to 31.10.1999. It has been clarified that during the aforesaid periods, he had never been engaged by the respondent. It is further asserted that the petitioner had been engaged, not on regular basis but as per the need of the respondent. It is further maintained that in the years, 1995 and 1996, the petitioner had completed 240 days but thereafter, without information, he did not report for work, for more than 1 ½ years. It has also been denied that his services had been retrenched in violation of section 25-F of the Act. On the contrary, the petitioner, himself had failed to report for duties without informing the respondent. As far as respondent is concerned, it had been engaging daily wagers on need basis as per its requirement and not on regular basis. Apart from this, Finance Department of Government of Himachal Pradesh had issued instructions wherein it was stressed that engagement of daily waged personnel without concurrence of Finance Department was in contravention of Government orders. It is further maintained that the respondent has not made any engagement after the issuance of Government instruction. Pursuance to the policy of reforming the public sector undertaking, the respondent had submitted its restructuring plan to the Government for acceptance. As per this restructuring plan, about 38 employees of different categories had been declared surplus and the respondent had proposed to adjust them in different departments. Other allegations denied.

4. By filing rejoinder, the petitioner reaffirmed his own allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the followings issues which were struck off by this Court on 10.1.2006.

1. Whether the services of petitioner have been illegally terminated by the respondent in violation of the provisions of I.D Act, 1947?? If so its effect?
.. OPP.
2. If issue No-1 is proved in affirmative to what relief of service benefits the petitioner is entitled to?
.. OPP.
3. Whether the petition in the present form is not maintainable?
.. OPR.

4. Whether the petitioner is estopped to file the present petition due to his own act, conduct and acquiescence? ..OPR.

5. Relief.

6. Before, I proceed further, it is pertinent to mention that vide award dated 26.8.2008, the petition of the petitioner had been allowed and he was ordered to be reengaged in service with seniority and continuity but without any back wages. The award, so passed by this Court, was challenged before Hon'ble High Court in CPW No. 2681 of 2008. As per order, passed by Hon'ble High Court, the case was remanded to this Court for determination afresh as to whether the period of absence of the petitioner was, in fact, necessitated by mental illness. Paragraphs No. 4 & 5 of the order of Hon'ble High Court, are relevant and are reproduced, as under:

“4. In writ proceedings challenging an award under the Industrial Disputes Act, a meticulous re-appreciation of facts cannot be resorted to. But at the same time, what I find from the award is that it becomes conjectural when it deals with the submission made on behalf of respondent No.2 herein that he remained absent from duty because of mental illness. This fact could have been very well proved from the treatment record as evidenced by the medical record/prescription slips of the I.G.M.C. or any other registered medical practitioner showing the petitioner's inability to attend to his job. Obviously if he was ill, it could not be said that he has abandoned his job and he would be entitled to leave of the kind due.

5. In these circumstances, without entering into any other controversy, this case is remanded to the Labour Court for determination afresh as to whether the period of absence of the petitioner was, in fact, necessitated by mental illness. For this purpose, the Tribunal will give both parties an opportunity of leading evidence. Needless to say that hyper technical approach will not be adopted by the Tribunal for the reason that the record does indicate that the petitioner was suffering from mental depression and he remained under treatment in hospital. In these circumstances, this petition is disposed of with the direction as above. Parties to appear before the Tribunal on 29th June, 2012. No order as to costs.”

7. When the case, after remand, was received in this Court, in view of the order of the Hon'ble High Court and directions narrated therein, the petitioner was afforded opportunity to lead his evidence and in consequence thereof, he examined himself on 16.3.2013, besides also examining Shri Ravi Chand on the said date i.e 16.3.2013. The respondent also examined Smt. Archna Sharma as its witness who was examined on 19.7.2013. It is further to be clarified that consequent upon the allowing of an application which had been filed by the petitioner to lead additional evidence and which was allowed by this Court, the petitioner examined Dr. Surender Kumar on 17.12.2013 and also Shri Darshan Sharma on the said date. To rebut the additional evidence, led by the petitioner, the respondent did not lead any evidence.

8. Besides having heard the learned counsel for parties, I have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue No. 1 Yes.

Issue No. 2 Entitled for reinstatement with seniority and continuity in service but without back wages.

Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered in favour of the petitioner and against respondent per operative part of award.

Reasons for findings

Issue No. 1

10. The contention of the petitioner is to this effect that he had been engaged as clerk on daily wages basis by the respondent in the month of October, 1993 and worked till December, 1993 and thereafter since, September, 1994 to November, 1996, he kept on working continuously. His case is further to this effect that since from December, 1996 to March, 1998, he had suffered from mental depression and underwent treatment, for this reason, he could not work. It has further been maintained that again he was allowed to work as daily wager w.e.f. 20.4.1998, initially, till 19.6.1998 and thereafter till 31.12.1999. Thereafter, he was not allowed to work w.e.f. 1.1.2000. This goes to show that as per the petitioner, his services had been illegally terminated in violation of the provisions of the Act because regarding his mental illness, he had intimated the respondent and his absence from duty was on account of his illness and not that he had voluntarily chosen to abandon his job. On the other hand, the defence version is to this effect that the petitioner had not informed regarding his alleged mental illness and that on his own, he had not joined his work.

11. When the petitioner appeared in the witness box, for the first time on 11.8.2008, as PW-1, he supported the facts as stated in the claim petition, on all material particulars, including that he had remained on medical leave from November, 1996 to March, 1998 as he had to remain under medical treatment. He has clarified that he was suffering from mental disorder. On April, 1998, he had made an application to the respondent for sanction of his leave. Preceding his termination, he had completed 240 working days in a calendar year. Consequent upon his application to Senior Medical Superintendent, Indira Gandhi Medical College, Shimla, he was issued fitness certificate copy of which is Ex. PA. At the time of his retrenchment, neither any notice was issued nor he was paid compensation. His juniors are still working with the respondent and they have been made regular. While proceeding on medical leave, he had informed the respondent.

In the cross-examination he denied not to have completed 240 days in the years 1998 and 1999. He further denied to have deposed falsely in order to justify his leave period.

12. The petitioner had also examined Shri Jeet Ram Thakur (PW-2), whose statement was recorded on 11.8.2008. According to this witness, the mandays chart of the petitioner is Ex. PB, which is correct as per original brought by him. Neither any notice nor compensation was paid to the petitioner when he left the job. In the crossexamination, he stated that the petitioner had been engaged for specific period as per the requirement of the work. He (petitioner) had not informed the respondent regarding his illness at any point of time. The respondent had not engaged any workman after 1998, as per notification Ex. RA, which is correct as per original.

13. In support of its defence, the respondent had examined Shri Tara Chand (RW-1) on 23.8.2008. According to him, the petitioner had been enaged as helper in October, 1993 and he continued to work as such till December, 1993. In Jan., 1994, he was reengaged and worked for 90 days. In September, 1994, he was again re-engaged and worked as such till Feb., 1995. In April, 1995, he was again reengaged and worked till November, 1996. Thereafter, he had abandoned the job on his own. In April, 1998, he was again re-engaged and worked for 46 days against the sanction of 60 days, granted by the Chairman of the respondent board. Again sanction, Ex. RA for

60 days, for the month of September and October, 1998, was received but he (petitioner) did not work in September, 1998. Only for 28 days, he had worked in the month of October, 1998. Sanction Ex. RB, was received for November and December, 1998 and the petitioner worked for 60 days during said months. Sanction Ex. RC, for 60 days was received for Jan., & Feb., 1998 but the petitioner worked for 57 days in the said months. Sanction Ex. RD, for 60 days was received for the months of June & July, 1999 but the petitioner worked for 17 + 31 days in 1999. Sanction Ex. RE was received for September, & August, 1999 and during these months, the petitioner worked for 61 days. Thereafter, no sanction was received for 1999. In November, 1999, the petitioner was engaged for 60 days and worked only for 28+24 days i.e 52 days in the said months. He had been paid entire salary for the work done by him. The petitioner had been engaged for specific period and for specific work. After, 1999, only the Finance Department of Government was competent to engage the workers. No daily wager had been engaged by the respondent board, after 1999. The petitioner had never informed the respondent board, about his illness, at any point of time. For the first time, in March, 2000, he had represented his case for reengagement. The petitioner had not completed 240 working days in 1999, preceding his abandonment of job. At present, the respondent board is not having any requirement of the work, earlier being done by the petitioner. In the cross-examination, he denied that the petitioner had sent letter dated 25.7.2001, which is mark A. He admitted that there had been many daily waged clerks with the respondent who have been made regular as per the policy of the Government. He denied that the petitioner had informed about his absence on account of his disease. Neither notice nor compensation had been paid to the petitioner after, 1999. NO enquiry had been conducted against the petitioner. He admitted that the surplus staff of the board has been absorbed by other departments of the Government. He denied that the petitioner had been terminated from service, intentionally. He admitted that Shri Ashok Kumar has been working with the respondent board since, 1993 till date. He admitted that S/Shri Lekh Ram, Bhupinder and Ramesh were made regular, recently, as per the policy of the Government.

14. Whereas, the evidence which has been led by the petitioner, before the remand of the case, goes to show that on account of his mental illness, he had to remain under treatment from November, 1996 to March, 1998 and further that before proceeding on medical leave, he had informed the respondent, but from the evidence which has been led by the respondent, it has been tried to show that the period during which, the petitioner had performed his job, he had been paid wages and that regarding his illness, he had not informed the respondent board at any time. The respondent has further led evidence that for the first time, the petitioner had represented his case in March, 2002 and that preceding his abandonment of job, in the year, 1999, he had not completed 240 working days. From the evidence, which has come on record and also the facts as stated by the respondent, in its reply, it is abundantly clear that the petitioner had performed the job as daily wager till December, 1999, as per the periods mentioned therein. This goes to show that w.e.f. 1.1.2000, the petitioner had not worked for the respondent. Although, the plea, taken by the petitioner, is to this effect that he had not been allowed to work w.e.f. 1.1.2000 but the defence version is to this effect that, on his own, he had abandoned the job without informing the respondent board regarding his alleged mental illness. Here, it is to be mentioned that the award dated 26.8.2008, passed by this Court was challenged before Hon'ble High Court in CWP No. 2681 of 2008. The Hon'ble High Court, in its order dated 24.11.2011, took notice of this fact as to whether the absence of the petitioner was on account of his mental illness. For this reason, the Hon'ble High Court observed that the fact regarding the mental illness of the petitioner could have been proved from the treatment record of Indira Gandhi Medical College, Shimla or any registered medical practitioner. It was further observed by the Hon'ble High Court that if the petitioner was found to be ill, it cannot be said that he had abandoned his job and in that event, he would be entitled for leave of kind due. Thus, the Hon'ble high Court remanded the case to this Court for determining afresh as to whether the period of absence of the petitioner was, in fact, necessitated by mental illness.

15. Consequent upon the order of the Hon'ble High Court, the petitioner was allowed to lead evidence and on 16.3.2013, he again examined himself as PW-1. In his evidence, he stated that from 1997 to 1998 (Feb.), he remained ill and during that period, he was undergoing treatment from Psychiatry department of Indira Gandhi Medical College, Shimla. After his illness, he again joined his work on 16.3.1998. Consequent upon his application for getting issued certificate, he had applied to Senior Medical Officer, Indira Gandhi Medical College, Shimla, vide Ex. PA. Upon his such application, Dr. Ravi Chand, Professor and Head of department of Psychiatry, issued a fitness certificate (Ex. PA). The cause of his absence was mental illness/disorder. In the cross-examination, he stated that whenever, he used to go for medical treatment in the psychiatry department, OPD slip was being prepared. Such medical slip has not been annexed by him with the petition. He denied not to have remained mentally ill.

15. The petitioner has also examined Dr. Ravi Chand Sharma (PW-2), who appeared in the witness box on 16.3.2013. According to him, since, 1987, he has been working in the department of psychiatry at Indira Gandhi Medical College, Shimla and w.e.f. 2000, he has been its Head of Department. He had issued fitness certificate Ex. PA, on having examined the record of the patient (Dola Ram). In the cross-examination, he admitted that, generally, fitness certificate is issued on a specific format. He further explained that if a patient applies for fitness certificate through Medical Superintendent in that event the same is given on the application itself. He admitted that medical fitness certificate, in the shape of Ex. PA, can be misused.

16. The petitioner has also examined PW-3, Dr. Surender Kumar, who appeared in the witness box, on 17.12.2013. According to him, he had remained posted as Medical Officer Himachal Hospital & Mental Health Shimla at Chakkar since, 2004. Prior to that, he was posted in Zonal Hospital, Mandi. He also remained posted in Indira Gandhi Medical College, Shimla from 1998 to 2002. Medical Certificate Ex. PW-3/B, has been issued by him which bears his signatures. He had examined the petitioner and on the basis of his history and record available with the department, he had issued certificate Ex. PW-3/B. He further stated that a patient suffering from mental disorder, understands the things but he may have different thinking. In the cross-examination, he admitted that in Ex. PW-3/B, he has not mentioned the name of the disease from which the petitioner was suffering.

17. The petitioner has also examined PW-4, Darshna Sharma, who appeared in the witness box, on 17.12.2013. From the summoned record, she stated that serial no. 6/98 has been entered in the name of petitioner (Dola Ram), the copy of which is Ex. PW-4/A. In the cross-examination, she stated that in Ex. PW-4/A, there is no mention of address and parentage of the petitioner (Dola Ram).

18. The respondent, after remand of the case, also examined Smt. Archna Sharma (RW-1), who appeared in the witness box on 19.7.2013. She stated that regarding the issuance of medical certificates, she has brought the entire record. The register, which has been brought by her, contains entries from 5.3.2001 to 30.1.2002. Ex. RW-2/A, is the photocopy of original register. In the cross-examination, she stated that in Ex. PA, entry encircled R-1, is in the hand of Dr. Ravi Chand Sharma and entry to this effect is mentioned in Ex. RW-2/A encircled R-2. She admitted that as per the original register, the fitness certificate has been issued in the name of Dola Ram Sharma.

19. By examining Dr. Surender Kumar (PW-3), who appeared on 17.12.2013, the petitioner has proved before this Court that he had been undergoing medical treatment from Psychiatry department of Indira Gandhi Medical College, Shimla, for mental disease/disorder, since, Jan., 1997. The certificate, which has been issued in this regard, is Ex. PW-3/B. From this certificate, it is borne out that when it was issued on 28.3.2000, by Dr. Surender Kumar, the petitioner had remained under treatment for mental disorder from, Jan., 1997 till the date of

issuance of certificate. It is further proved from this certificate that the patient had been advised for time to time checkups. Ex. PA, is the fitness certificate, which had been issued by Dr. Ravi Chand (PW-2), who was examined on 16.3.2013. As per this certificate, the petitioner was found to be mentally fit to do his duties on 4.4.2001. The medical evidence, which has been referred to above, clearly goes to show that on account of his mental illness, the petitioner could not attend his work and that whenever, he was declared mentally fit, he approached the respondent board for his reengagement. Thus, it cannot be said that he had abandoned the job, as is the case of the respondent.

20. Ex. PB is the mandays chart of the petitioner which goes to show that he had completed 328 days in the year 1995 and 360 days in 1996 respectively. In the year, 1999, he had put-in 218 days, on having been given fictional breaks in the months of March, April & May. From this document Ex. PB, it is quite clear that the petitioner could not complete 240 working days in the year, 1999, when his services were allegedly retrenched/terminated. Here, I would like to point-out that continuing of 240 days is not necessary in the calendar year preceding the termination of a workman but any of the calendar year, in which the petitioner completed 240 days, can be taken into consideration. There lord ship of Hon'ble Supreme Court in case titled as **Shriram Industrial Enterprises Ltd. Vs. Mahak singh and others** reported in (2007) 4 Supreme Court Cases 94 has held that:-

“The exclusion of the word preceding from section 2(g) of the U.P Act indicates that a workman in order to be in continuous service may have worked continuously for a period of 240 days in any calendar year during his period of service.”

21. Considering the legal position, I may conclude that the working days put-in by the petitioner in 1995-96 for more than 240 days can also be considered for the purpose of claiming protection under section 25-F of the Act.

22. Another plea of the petitioner is that his juniors are still working with the respondent board. When, regard is given to the evidence of Shri Tara Chand (RW-1), it is revealed that, in the cross-examination, he states that Ashok Kumar has been working since 1993 till date and S/Shri S/Shri Lekh Ram, Bhupinder and Ramesh were made regular as per policy of Government. From his such evidence, the contention of the petitioner that his junior Ashok Kumar has been retained, in service, by the respondent board is fully proved. In this way, it can be said that there is violation of section 25-G & H of the Act. In **2007 LLR 72 SC, State of Haryana Vs. Dilbagh Singh**, the Hon'ble Apex Court has held as under:

“Respondent was serving as beldar in PWD (B&R) and his services were terminated on 25.12.1999-Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act. Court directed reinstatement.”

23. Since, on record, it stands proved that Shri Ashok Kumar, who has been appointed in 1993, is junior to the petitioner, he has been able to show that there has been breach of sections 25G & H of the Act. It is further to be observed that if the petitioner had absented himself, the respondent board was required to afford him opportunity to either join duties or to face consequences, as per law/rules. Here, I may like to point-out that as per the version of the petitioner, he had intimated the respondent board regarding his mental illness. Even if, his such version is not taken to be correct, still, it was required of the respondent to have issued him show cause notice either to join duties on or before the date mentioned therein or that action in accordance with law was proposed to be taken against him for having absented from duties. In other words, it can be said that the respondent board was required to follow the principles of natural justice by giving him an opportunity to explain his position.

24. Consequently, having regard to the entire evidence, which has come on record, I, without hesitation, hold that on account of his mental illness, the petitioner could not perform, his work/job and the defence version that he had abandoned the job, is not proved. In this way, it can be said that his services had stood illegally terminated by the respondent in violation of the provisions of the Act. Accordingly, my answer to this issue is in "yes".

Issue No. 2

25. Since I have held under issue No.1 above, that the petitioner was illegally terminated by the respondent in violation of provisions of Act, 1947, the petitioner is entitled to reinstatement, with continuity and seniority but without back wages, in view of the peculiar circumstances of the case. Accordingly this issue is decided in favour of petitioner and against the respondent.

Issue No. 3.

26. In support of this issue, no evidence has been led by the respondent. Moreover, I find nothing wrong in this petition which is held to be perfectly maintainable in the present form. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4

27. Also on this issue, no evidence has been led by the respondent to show as to how the petitioner is estopped from filing this petition by his own acts, conduct and acquiesces. In view of no such evidence on record, it can be safely concluded that the petitioner is not estopped from filing this petition by his own acts, conduct and acquiesces. Hence, this issue is decided in favour of petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issue No. 1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reengaged in service forth-with with seniority and continuity but without back wages inview of the peculiar circumstances of the case and as such the reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records. aannounced in the open court today on this 31st March 2014.

A. S JASWAL,
Presiding Judge,
Labour court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 97 of 2009
Instituted on 18.11.2009.
Decided on 3.3.2014.

Gabriel Employees Union, INTUC, Parwanoo, District Solan, HP through President/General Secretary.

..Petitioner.

VERSUS

1. Madan Lal Contractor, C/o M/s Federal Mogul Bearings India Ltd. Sector-II, Parwanoo, District Solan, HP.

2. M/s Federal Mogul Bearings India Ltd. Sector-II, Parwanoo, District Solan, HP, through its Managing Director.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri R.K Khidta, Advocate.

For respondents: Shri Rahul Mahajan, Advocate.

AWARD

The reference for adjudication is as under:

“Whether the financial demands raised by the President/General Secretary, Gabriel Employees Union, INTUC, Parwanoo, District Solan, HP vide demand notice dated 7.11.2006 (copy enclosed), before the management of M/s Gabriel India Ltd. Plot No. 5, Sector-2, Parwanoo and Shri Madan Lal Contractor of M/s Federal Mogul Bearings India Ltd., Sector-II, Parwanoo, District Solan, HP. are legal, reasonable and justified? If yes, what financial benefits the canteen workmen are entitled to as per said demand notice, if not, what are its legal effects?”

2. The case of the petitioner, Gabriel Employees Union, INTUC, District Solan, HP through its President/General Secretary (hereinafter referred as petitioner), is to this effect that the workers working with the respondent company have formed union known as Gabriel Employees Union which is duly registered and its registration number is 258. Shri Dwarka Nath is the duly elected President of the union and that he has been authorized to file the claim petition on behalf of the workers union. It is further said that workers namely S/Shri Hari Ram, Parshotam, Bheem Bahadur, Mohinder Singh, Ganga Ram, Shiv Dass, Bhisham Singh, Narender Rana, Neter Bahadur, Sheer Singh, Jagdish Cander and Bhag Chand, are working in the canteen and kitchen garden of the respondents and that they are the members of the Union. Initially, all the workers had been employed by respondent no.2, which is clear from the ESI Card, issued by the competent authority. However, later on, they have been shown to have been engaged through respondent no.1. Thus, at present, all the workers have been working with respondent no.2 through respondent no.1. It is further averred that even, respondent no.1, has been the employee of respondent no.2 and is getting monthly salary. Just to frustrate the rightful claim of the workers and in order to save themselves from their liability, the company has shown him (respondent no.1) as contractor. Earlier, the parties used to settle their respective claims including increase in salary of the workers, by way of long term settlements either for three years or five years. Settlement, annexure P-3, was made for three years and the later on, settlement annexure P-4, for five years. After the expiry of every settlement, new settlement used to be executed between the parties by increasing their salaries as well as other benefits. The workers also used to perform their duties, as agreed in the settlement. The last long term settlement between the workers union and respondents had been executed for the period w.e.f. 1.10.2001 to 30.9.2006, as per annexure P-4. Ultimately, after the expiry of this settlement, the workers, through its union, approached the respondents for the settlement of demands but due to their (respondents) adamant attitude, no settlement could be arrived at between the parties. In this way, the workers had been forced to file demand notice through Union. Even, during conciliation proceedings, the needful could not be done due to adamant attitude of the respondents. It is further

said that the demands, raised by the workers, through its union, are genuine and the same deserve to be allowed because due to heavy inflation, their salaries deserve to be increased. It is further asserted that the respondents are bound to settle their demands as their wages and other benefits, used to be increased only by way of settlement. Since, the respondents are not settling their demands, it amounts to unfair labour practice for which they (respondents) deserve to be punished and the demands of the workers, raised through its demand notice dated 7.6.2006, deserve to be allowed and the respondents are required to be directed to pay the same from the date of expiry of earlier settlement i.e w.e.f. 30.9.2006. It is further said that the work load of the workers has also got increased as initially, there had been 150 workers who used to take meals and now, at present, there are 350 workers and staff members who are taking food/meals, in the canteen. As far as the strength of the workers, working in the canteen, is concerned, it has remained same. It is further maintained that despite the expiry of the earlier settlement, salary and other benefits of the workers have not been increased by the respondents. Further, both the respondents are liable to accept their financial demands as they (workers) have been doing work in the canteen which is owned and possessed by the respondent no.2 and shown to have been employed through respondent no.1. Thus, they (respondents) become jointly and severely liable to accept their demands and to pay the benefits as raised in the demand notice. Against this back-drop, a prayer has been made to accept all the demands, raised in demand notice dated 7.11.2006.

3. The petition has been contested by respondent no.1 (Madan Lal, Contractor), by raising preliminary objections including maintainability and that the petitioner has concealed true and material facts from the Court. On merits, it has been asserted that the canteen is being run by the replying respondent and that the workers are his employees. As far as M/s Federal Mogul Bearings India Ltd., (respondent no.2), is concerned, it has nothing to do with the workers, as per their names mentioned by the petitioner. It is further clarified that the replying respondent has been running the canteen since the time of Gabriel India Ltd., and subsequently M/s Anand Engine Components Ltd. The workers of the replying respondent are not the members of Gabriel Employees Union having registration no. 258 and that Shri Dwarka Nath has not been authorized to raise the demand notice and to file the claim petition. Under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred as Contract Labour Act) the replying respondent has got licence and M/s Federal Mogul Bearings India Ltd., (respondent no.2) is also registered under the Contract Labour Act. It has been denied that the workers have been performing their duties as per the settlement. In fact, they have flouted the settlement many times. The names of Hari Ram and Bhag Chand are in respect of the employees of replying respondent, as per ESI Card. The benefits to the workers are being paid by the replying respondent but the additional benefits could not be paid for want of financial viability. The demand notice, as raised, is false and frivolous. It is further averred that, at present, the wages and other benefits, which have been paid to the workers, are far above than what the similar workers are getting while being employed in other canteens, in different establishments. At no point of time, there had been more than 170 to 190 workers and staff members to take food/meals in the canteen. It is further averred that the replying respondent cannot accept the unjustified demands raised by the petitioner. Other allegations denied.

4. M/s Federal Mogul Bearings India Ltd., (respondent no.2), has also contested the claim of the petitioner on having raised preliminary objections including maintainability and that the petitioner has concealed true and material facts. It has further been clarified that there had been no relationship of the employer and the employees between the replying respondent and that of the workers, employed by Madan Lal, Contractor. In fact, the workers employed by canteen contractor are the employees of Madan Lal, who is responsible for the payments of ESI, EPF etc. and that the replying respondent has been unnecessarily arrayed as party in the claim petition. On merits, it has been asserted that the Gabriel India Ltd., had been set-up in 1979, in Parwanoo, District Solan H.P and in the month of March, 2007, it was demerged in to a separate company i.e M/s Anand Engine Components Ltd. In Feb., 2008, Federal Mogul Components took control of M/s Anand Engine

Components and renamed it as Federal Mogul Bearings India Ltd. As far as Madan Lal, Contractor, is concerned, he has got licence for providing contract labour to respondent no.2 under the Contract Labour Act and the replying respondent has also the registration to employee contract labour under the Contract Labour Act. Thus, at no point of time, the said workers, employed by Madan Lal Contractor, were the employees of replying respondent. Their ESI Cards only reflect the name of Gabriel India Ltd., in the address column and do not specify that Hari Ram and Bhag Chand are the employees of Gabriel India Ltd. When, demand notice dated 7.11.2006, was raised, Gabriel India Ltd., had filed a reply during conciliation proceedings and subsequently, a reply was also filed by M/s Anand Engine Components Ltd., whereby it had been specifically stated that the workers, working in the canteen, were not their employees and that the union had no legitimate right to raise any demand or dispute. It is also averred that whenever, settlements had been entered into between Madan Lal, Contractor/canteen workers and Gabriel Employees Union, the replying respondent had not been party to the same. Even, in the reply, filed to the demand notice, before Labour-cum-Conciliation Officer, Madan Lal Contractor had submitted that the canteen workers had been employed by him and that they were getting more than the minimum wages. Apart from this, they had also been getting other benefits/allowances. Other allegations denied.

5. By filing rejoinders to the replies filed by respondent no.1 & 2, the petitioner has reaffirmed its own allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 21.4.2011.

1. Whether the demands having been raised by the petitioner union are reasonable and justifiable as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, whether the petitioner union is entitled for financial benefits as prayed? ..OPP.
3. Whether this petition is not maintainable as alleged? ..OPR.
4. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

- | | |
|-------------|--|
| Issue no. 1 | Decided accordingly in “Yes”. |
| Issue no. 2 | “Yes” accordingly. |
| Issue no. 3 | No. |
| Relief. | Reference answered in favour of the petitioner and against the respondents, per operative part of award. |

Reasons for findings

Issue no.1 & 2.

9. Being interlinked, both these issues are taken up together for discussion and decision.

10. It has been specifically alleged by the petitioner that the workers, as per their names mentioned in para no.2 of the petition, are the employees of respondent no.2 and that they have

been shown/alleged to have been engaged through respondent no.1, contractor of the canteen. When, regard is given to the reply, filed by respondent no.2, it has been specifically stated that the workers are the employees of Madan Lal, Contractor, having licence under Contract Labour Act and that they are being paid wages etc. by him. In his reply, Madan Lal, Contractor (respondent no.1) has also submitted that the workers, as mentioned in the petition, are his workers and have been employed by him and that the salary/wages, to them, are being paid by him. Before, I proceed further it needs to be established that as to whether the workers of the petitioner union, as have been named above, are the employees of respondent no.1 or that of respondent no2.

11. In his affidavit, Shri Dwarka Nath (PW-1) has restated the facts as have been mentioned in the petition, on all materials counts, including that he is a duly elected President of the union and authorized to file the claim petition and to give evidence on behalf of the workers union. It has also been specifically stated by him that the workers of the union had been employed by respondent no.2 but later on, they were shown to have been engaged through respondent no.1. It has also been stated that respondent no.1, himself is the employee of respondent no.2, on monthly salary, and that the company has shown him as contractor just to frustrate the rightful claim of the workers. In evidence, copies of documents Ex. P-1 to Ex. P-35 have also been tendered. In the cross-examination, he denied that the workers of Madan Lal, Contractor, had never been the members of their union. In the ESI Card, the name of the employer is not mentioned. Further, stated that, in it, the name of the principle employer has been mentioned as Gabriel India Ltd. He denied that the company had no concern with Ex. P-7, (minutes of the canteen committee meeting, held on 10.6.1986). He expressed his lack of knowledge that ESI, EPF & other benefits, on behalf of canteen workers, are being paid by Madan Lal Contractor. He cannot produce ESI Card about employing workers by the company. He explained that the ESI Code number of company workers and the canteen workers is the same. He admitted that every worker has different ESI number. He denied that the petitioners are the workers of Madan Lal, contractor only.

12. To the similar effect is the evidence of Mahender Singh (PW-2).

13. Ex. R-1, is the affidavit of Madan Lal, canteen contractor, which he tendered, while appearing in the witness box as RW-1. In his affidavit, he stated that under the Contract Labour Act, he has got a licence and under the same Act, Federal Mogul Bearings India Ltd., has also registration. He further stated that the workers S/Shri Hari Ram and others have been employed by him, in the canteen, which is being run by him. To them, he is paying the wages, which are more than minimum wages. He further stated that he is not the employee of M/s Federal Mogul Bearings India Ltd., (respondent no.2).

Independently, he is running the canteen, being contractor, and has also employed his workers S/Shri Hari Ram, Parshotam and others. All the statutory compliances, under the Labour Laws, including contribution under ESI, EPF and MP Act, are being done by him. When, cross-examined on behalf of respondent no.2, he admitted that one worker namely Bhim Bahadur has expired. He maintains the record under labour laws including EPF, attendance register, payment of wages etc. To the workers, he has been paying the wages. HP-5475-A, is his EPF code number. He has not got independent ESI Code number but the contribution in this regard is being made by him. He had an agreement with Gabriel Employees Union, in which respondent no.1, was not party. When, cross-examined on behalf of the petitioner, he stated that the licence of the contractor was taken by him in the year, 1988. Prior to that, he had been working with M/s Gabriel India Ltd. and till date, he has been doing work there. From the company, he does not get any salary. Further explained that, he gets commission to the tune of Rs. 5,000/- to 7,000/-, from the company. With the company, he has agreement to run the canteen, as per Ex. RA. He admitted that in the year, 1981, he had no licence of contractor-ship. At that time, he was territorial subedar manager. He admitted that the canteen is of the company and it is also situated in its premises. The bills Ex.

RA-1 to Ex. RA-4, have been issued in the name of the company regarding the articles/goods which were supplied to it. The company has constituted a canteen committee as per Ex. RA-5. His name does not figure in that list as per Ex. RA-5. In the canteen, the workers get food on subsidized rates. The money, on subsidy, is paid by the company. He denied that some workers were already employed in Gabriel India Ltd., before his joining the same. He denied that S/Shri Mahender Singh, Bhim Bahadur, Hari Singh and Jagdish had been employed in the year, 1980. Self stated that they had been employed in the year, 1983-84. He cannot increase the wages of the workers till the management increases his money. Regarding payment of salaries, bonus etc., to the workers, he raises bills, the money of which is paid by the company. He admitted that HP- 5475 is the code of the company. Further stated that Sub Code HP 5475-A is his code. The ESI code is that of the company. He denied that the workers are the employees of the company.

14. Shri Balvinder Singh, RW-1, in his affidavit, EX. RW-1/A, has stated that S/Shri Hari Ram and others are the employees of Madan Lal, contractor, and that they are not the workers/employees of M/s Federal Mogul Bearings India Ltd., (respondent no.2). In the cross-examination, he has stated that since 6.9.1982, he has been working in the company. Before his joining, the company (Gabriel India Ltd.), was already in existence. He had got appointment in Gabriel India Ltd. At that time, the canteen was being run in the company. He denied that the canteen was of company. He admitted that the licence of Madan Lal, Contractor, was issued on 19.2.1987. He is working as Manager, HR, in the company. He does not know as to who had appointed the workers, who were working in the canteen, when he was appointed, in the company. In the year, 1981, they had given the contract of canteen to Madan Lal, contractor. He does not know that in the year, 1981, he (Madan Lal) was not registered. He has no such detail which could go to show that the company pays money to Madan Lal contractor in order to run the canteen. He clarified that the payments are being paid through Madan Lal. He admitted that bills Ex. RA-1 to Ex. RA-4, have been issued in the name of the company. The company has constituted a canteen committee. He has no such record which could go to show that by inviting tenders the contract of the canteen had been given to Madan Lal, contractor. He does not know that since, 1980, there have been 14 workers in the canteen. He denied that all the workers of the canteen are the workers of respondent no.2.

15. Although, in the evidence of Madan Lal (RW-1), it has come that the workers, working in the canteen, are his employees, to whom, the wages and other benefits are being paid by him but when regard is given to his cross-examination, as conducted on behalf of the petitioner, it is abundantly clear that in the year, 1988, he had obtained the licence. His evidence further goes to show that since 1988 till date, he has been doing job in the company. Although, he does not get any salary from the company but gets commission to the tune of Rs. 5000/- to 7000/. In the evidence of Shri Balvinder Singh (RW-1), it has come that Madan Lal, contractor had got the licence on 19.2.1987. It has been specifically admitted by Shri Madan Lal (RW-1), that in the year, 1981, he was not having licence of contractor. He further made it clear that in the year, 1996, he was Subedar Manager and that the canteen belongs to the company. Although, it has been denied by him that S/Shri Mahender Singh, Bhim Bahadur, Hari Singh and Jagdish had been employed in the year, 1983-1984 but from his such evidence, it is quite clear that the said workers had been working in the canteen prior to his getting licence of contractorship. When, he was not having the licence of contractor-ship, at the time, when said Mahender Singh & others were employed as workers in the canteen, the version of this witness (Madan Lal RW-1), that they had been employed by him is totally wrong and false. On the other hand, it has been stated by Shri Dwarka Nath (PW-1), in his affidavit, that the workers, working in the canteen, had been employed by respondent no.2 and that later on, they have been shown to have been engaged through respondent no.1 (Madan Lal, contractor). On the record, there are bills, Ex. RA-1 to Ex. RA-4, which have been issued in the name of the company (M/s Federal Mogul Bearings India Ltd.). The evidence of Madan Lal (RW-1) also goes to show that since, 1988, he has been doing the job in Gabriel India Ltd. and working

as such till date. I may make it clear that ,as is the version of respondent no.2, M/s Gabriel India Ltd., which was set up in 1979, was demerged in to a separate company i.e M/s Anand Engine Components Ltd., and in the month of Feb., 2008, M/s Federal Mogul Bearings India Ltd., took control of said M/s Anand Engine Components and renamed it as M/s Federal Mogul Bearings India Ltd., (respondent no.2). This goes to show that Madan Lal (respondent no.1), also became the employee of respondent no.2. If he had been running the canteen, as contractor, on his own, there was no necessity for the issuance of bills Ex. RA-1 to Ex. RA-4, in the name of the company. In this way, having regard to the evidence, which has come on record, I have no hesitation in holding that the workers of the petitioner union have been employed by the respondent no.2 but later on, they were shown to have been engaged through respondent no.1. It has been held by **Hon'ble Delhi High Court in 2013, LLR 352, the management of Ashoka Hotel Vs. Their workmen and Anr.** that: "**a contract between principal employer and contractor would be untenable if the control of economic activities is in the hand of principal employer though salary to the workmen was paid through the contractor for which the contractor was paid commission.**"

16. In the case in hand, the evidence of Shri Madan Lal Contractor (RW-1), goes to show that before entering in to settlements with the union/workers, he used to have discussion with the company. If the workers had been the employees/workers of Madan Lal Contractor (respondent no.1), there was no occasion for him to have discussions with the company before entering in to a settlement with them. His such evidence goes to show that the control of the economic activities of the canteen is with the principal employer (respondent no.2).

17. Now, the question arises as to whether the demands raised by the petitioner union are reasonable and justified. In the petition, it has been mentioned that there had been two settlements, annexure P-3 and P-4, between the parties. Ex. P-3, is the demand notice/letter for the increase of wages. Ex. P-4, is the memorandum of settlement dated 1.3.2005. Its perusal goes to show that as per its terms and conditions, the parties had agreed that the duration for the applicability of this settlement was for five years i.e 1.10.2001 to 30.9.2006. It is further borne out that during the currency of this settlement, financial benefits were to be available to the workmen, as per there mention, given therein. In the evidence of Dwarka Nath (PW-1), it has come that demand notice dated 7.11.2006, had been raised by the petitioner. The perusal of this demand notice goes to show that the workers, through its union, had demanded increase in basic pay to the tune of Rs. 2500/-, D.A Rs. 2000/-, washing allowance, Rs. 300/-, Education allowance Rs. 500/- heating allowance Rs. 200/-. There was also demand to increase LTA by Rs. 1000/- and also to increase loan on all kinds by Rs. 25000/-. The annual allowance be increased by Rs. 200/- and bonus be given to the extent of 30%. In the evidence of Madan Lal (RW-1), it has come that the workers are being paid the same salary/wages which they were getting in the year, 2006. He admitted that demand notice Ex. P-6, had been served upon him by workers union. He admitted that on 28.9.2001, a demand notice had been given to the company, the copy of which is Ex. P-5. As per this demand notice, he had entered into a settlement with the workers. From the evidence, which has been referred to above, it is quite clear that there has been no increase in the wages of the works since, 2006. Memorandum of settlement dated 1.3.2005, Ex. P-4, which had come in to operation w.e.f. 1.10.2001 to 30.9.2006, has came to an end. The workers through its union, in my view, are justified to seek increase in their basic pay+ annual increment, DA etc., as mentioned above, w.e.f. 1.10.2006, when the terms and conditions of the earlier settlement came to an end. The workers have sought an increase in the basic pay to the tune of Rs. 2500/- and annual increment to the tune of Rs. 200/-. Having regard to the inflation, which has taken place, this demand appears to be reasonable and justified. The increase in basic pay + annual increment can be given w.e.f. 1.10.2006. Similarly, the demand of the workers for DA in the sum of Rs. 2000/-, is also held to be justified. Another demand of the workers is for increase in their annual leave. In this regard, no specific evidence has been led but still I am of the view that they (petitioners) should be entitled for increase in annual leave at par with the government instructions/notifications, issued from time to

time, regarding the workers, working in the various establishments. I further hold that their other demands for washing allowance, education allowance, heat allowance, as per their demand notice Ex. P-6, are also reasonable and justified. As far as other demands of the workers are concerned, as per Ex. P-6, in my view for want of specific and cogent evidence, the same are not proved to be justified. Accordingly, the workers of the petitioner union are held entitled for financial benefits, as under:

1. Increase in basic pay + annual increment w.e.f. 1.10.2006, Rs. 500/- per year.
2. Increase in D.A w.e.f. 1.10.2006, Rs. 400/- per year.
3. Increase in washing allowance, w.e.f. 1.10.2006 Rs. 80/- per year.
4. Increase in Education allowance w.e.f. 1.10.2006, Rs. 100/- per year.
5. Increase in heat allowance w.e.f. 1.10.2006, Rs. 25/- per year.
6. Increase in annual leaves at par with the instructions/notifications, issued by the government, from time to time, regarding the workers, working in the various establishments.

And as such, both the issues are decided partly in affirmative accordingly.

Issue no. 3

18. As per objection, taken by respondent no.1, the petition is said to be not maintainable because the petitioner has concealed true and material facts from the Court. Respondent no.2, has alleged the petition to be not maintainable on the plea that the workers, as per their names given in the petition, are not its employees. It has been held by me that the workers are the employees of respondent no.2, and that they have been shown to be the employees of the contractor (Madan Lal) just to frustrate the rightful claim of the petitioner. In these circumstances, it cannot be said that this petition is not maintainable against respondent no.2. Since, respondent no.1, has alleged that the workers are his employees, from his such stand, it can also not be said that this petition is not maintainable against him. Accordingly, I hold this petition to be maintainable against both the respondents and as such my answer to this issue is in “No”.

Relief.

As a sequel to my findings on the aforesaid issues, this petition deserves to be allowed and accordingly, I allow it partly, with the result, the petitioner union is held to be entitled to the following financial benefits, from respondent no.2 (M/s Federal Mogul Bearings India Ltd.).

1. Increase in basic pay + annual increment w.e.f. 1.10.2006, Rs. 500/- per year.
2. Increase in D.A w.e.f. 1.10.2006, Rs. 400/- per year.
3. Increase in washing allowance, w.e.f. 1.10.2006 Rs. 80/- per year.
4. Increase in Education allowance w.e.f. 1.10.2006, Rs. 100/- per year.
5. Increase in heat allowance w.e.f. 1.10.2006, Rs. 25/- per year.
6. Increase in annual leaves at par with the instructions/notifications, issued by the government, from time to time, regarding the workers, working in the various establishments.

Consequently, in view of the findings arrived at by this Court while deciding this petition, the reference, as made by the appropriate government, stands answered accordingly in favour of the

petitioner and against the respondents. It is further made clear that since, it has been held by me, that the workers of the petitioner union are the workers of respondent no.2, hence, respondent no.2 is liable to make the payments of the aforesaid financial benefits. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 3rd day of March, 2014, in the presence of parties counsels.

A. S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

App.39/2013

Sh. Kuldeep Kumar V/s Sh Bali Ram & others

15.3.2014:-

Present:- Sh A.K.Sharma , AR for the petitioner.
 None for the respondent.

In view of the statement of Shri A.K.Sharma AR for petitioner, already a compromise has been effected between the parties , Thus , this petition stands disposed of as having been compromised. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:-

15.3.2014

Sd/-
Presiding judge
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 117 of 2010.
 Instituted on 27.10.2010.
 Decided on 3.3.2014.

Prem Chand S/o Shri Beli Ram R/o Village Koel Sanog, P.O Bani Materni, Tehsil Arki, District Solan, HP.

..Petitioner.

VS.

1. Conservator of Forest, Talland Shimla, HP.
2. Divisional Forest Officer, Wild Life, Shimla Division, Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Sanjay Bhardwaj, Advocate

For respondent: Shri Surender Negi, Ld. DDA.

AWARD

The reference for adjudication, is as under:-

"Whether verbal termination of the services of Shri Prem Chamd S/o late Shri Beli Ram daily wage workman by the Divisional Forest Officer, Wild Life Division, Shimla HP w.e.f. 1.4.2000 without serving chargesheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas junior to him retained by the above employer, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?"

2. The contention of the petitioner is to this effect that he was engaged as beldar on 2.2.1996, by the respondents and worked as such, till 1998, when he was assigned the work of Mali. In that capacity, as Mali, he had worked in H.P Secretariat for the maintenance of parks and thereafter, he was deployed, as Mali, in Raj Bhawan, Shimla. He had also worked in the parks at New Shimla and also made chuk dam in Raj Bhawan. Thereafter, the respondents had decided to transfer the management of the parks to the Municipal Corporation, Shimla along-with the staff working in the parks. However, later on, neither he was transferred to Municipal Corporation, Shimla nor retained by the respondents. It is further alleged that on 1.4.2000, his services were orally terminated, without serving any notice, upon him, as was required under the Industrial Disputes Act, 1947 (hereinafter referred as Act). Prior to his retrenchment, he had served the respondents for more than 240 days in each calendar year from the date of his engagement, as beldar. Since, the respondents neither issued him one month's notice, in writing, indicating the reasons for his retrenchment nor paid any compensation in lieu thereof, his retrenchment is in violation of the provisions of section 25-F of the Act. Apart from this, the persons namely S/Shri Ginder Singh and Ramesh Chand, who had been engaged later on, were not retrenched by the respondents. On having felt aggrieved by his oral termination, he had approached the erstwhile Administrative Tribunal (hereinafter referred as Tribunal), in order to seek relief against his illegal termination. His such application was registered as O.A No. 1995 of 2000. However, the same was dismissed on 13.1.2006, for want of jurisdiction. Since, his services had been disengaged without following the due procedure as prescribed under the Act, he served a demand notice upon the respondents. Although, during the conciliation proceedings, the respondents had agreed to reengage his services but later on, they failed to do the needful. In these circumstances, a reference came to be made to this Court by the appropriate government. It is further alleged that after his termination, he has not been gainfully employed. Against this backdrop, a prayer has been made to reengage him in service w.e.f. 1.4.2000, along-with backwages, seniority and other consequential service benefits.

3. The claim Petition has been contested on having raised various preliminary objections, including jurisdiction, as the respondent department is not an industry. Further, the petitioner had been engaged against a work being carried out, exclusively under Foreign Aided Project called Eco-Development NORAD Project (hereinafter referred as Project), which was for a limited tenure. The forest department (respondent) was only the executing agency. Since, the Project stood closed for want of availability of funds, all daily waged labourers, including the petitioner, were automatically disengaged. Since, the petitioner had been engaged purely on seasonal and temporary works, depending upon the life of Project, no vested right had been created in his favour. It is further pleaded that as per the law laid down by the Hon'ble Apex Court, no direction to reengage a

worker can be given by the Court when the Project, in which he had been engaged, had come to an end. On merits, it has been asserted that the petitioner had been engaged in the Project on daily wages basis, as per requirements of seasonal work, w.e.f. 1.2.1996. It has been specifically denied that he had been engaged as beldar on 2.2.1996 and was assigned the work of Mali, as alleged. The Project, a foreign aided one, was being executed by the wild life division of forest department where the services of the petitioner were being utilized for carrying labour works. On the completion of the Project, the work was stopped and thus, there is no question of disengagement of the petitioner. It is further maintained that as per settled position of law, the persons employed in a Project have no vested right after its closure. The services of all the workmen had come to be terminated, automatically, after the completion of the Project. Thus, the services of the petitioner also stood terminated as the same were no longer required. Hence, no question arises for the violation of section 25-F of the Act. It is further asserted that the services of Shri Ginder Singh, daily wager, were also terminated by the department but he was reengaged as per the order passed by the Hon'ble Tribunal. It is further clarified that the services of Shri Jeet Ram, daily wager, were also reengaged, as per the orders passed by the Hon'ble Tribunal. The question of paying back wages along-with interest to the petitioner does not arise. Other allegations either admitted or denied.

4. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 3.12.2011.

1. Whether the termination of services of petitioner by the respondent w.e.f. 1.4.2000, is in violation of the provisions of Industrial Disputes Act, 1947? ..OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?
..OPP.
3. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

- | | |
|-------------|--|
| Issue no. 1 | Yes. |
| Issue no. 2 | Entitled to reinstatement in service with seniority and continuity but without back wages. |
| Relief. | Reference answered in favour of the petitioner, per operative part of award. |

Reasons for findings

Issue no.1 &2.

8. Both these issues, being interlinked, are taken up together for discussion and decision.

9. The contention of the petitioner is that he had been engaged as beldar on 2.2.1996, and his services came to be terminated, orally, on 1.4.2000, in violation of the provisions of section 25-F of the Act. On the other hand the defence version is to this effect that the petitioner had been

engaged, on daily wages basis, in the Project, being executed by wild life division, Shimla w.e.f. 1.2.1996, in order to do labour work. It has been denied that on 2.2.1996, he had been engaged as beldar. The defence version is further to this effect that after the completion of the Project, the work was stopped and thus, there was no question of disengagement of the services of the petitioner.

10. Learned Counsel appearing on behalf of the petitioner has submitted that from the evidence, on record, it stands duly proved that the petitioner had been engaged in the year, 1996 and that in each calendar year, he had been working for more than 240 days. Even, in the calendar year preceding his termination, he had completed 240 days. Ld. Counsel further urged that there is no evidence, on record, which could go to show that the services of the petitioner had been engaged for a specific period or that the same were to come to an end with the completion of the work of the Project. In these circumstance, his services could not have been terminated without having complied with the provisions of section 25-F of the Act. Ld. Counsel further urged that since, the services of the petitioner had been disengaged without complying with the provisions of section 25-F of the Act, he deserves to be reinstated in service with seniority and continuity along-with full back wages.

11. On the other hand Ld. Dy. DA appearing on behalf of the respondents submitted with vehemence that since the services of the petitioner had been engaged in order to do the labour work, in the Project, the same stood automatically disengaged when the Project came to be closed due to non availability of funds. He further urged that some of the workers had to be reengaged by the respondents on the orders of Hon'ble Tribunal. Since, the services of the petitioner had come to be disengaged due to closure of the Project, neither, he is entitled to be reengaged in service nor for other benefits including back wages etc.

12. It has been stated by petitioner, when he appeared in to the witness box as PW-1, that he had been engaged as beldar on 2.2.1996, and his services were disengaged on 1.4.2000, without any notice/compensation. In each calendar year, he had been working for more than 240 days. Ex. Pw-1/A is his mandays chart. Along-with him, S/Shri Ginder Singh, Ramesh Chand and Jeet Ram had also been engaged and that they are still in job/service. After his disengagement, he had filed a case before Tribunal, which was dismissed. Thereafter, he had raised a demand notice. His juniors namely S/Shri Govind Singh and Ishwar Dass are still in job. One Shri Jeet Ram had been engaged by the respondent on the orders of the Court. In the cross-examination, he denied that he had been engaged, on daily wages, for doing seasonal work w.e.f. 1.2.1996. He further denied that after the completion of the work of the Project, his services stood disengaged automatically. He admitted that Shri Ginder Singh, daily wager had also been disengaged along-with him but further explained that by the orders of the Court, he was reengaged.

13. Shri Sunder Lal Sharma, PW-2, stated from the summoned record that Shri Ginder Singh was engaged as casual labourer in the Project w.e.f. 1.4.1995 and that his mandays chart is Ex. PW-2/A. He is still in service. Shri Jeet Ram had also been engaged in the Project on 1.5.1996 and his mandays chart is Ex. PW-2/B. He is still in job. Both the said workers had been reengaged on the orders of the Court, the copies of which are Ex. PW-2/C and Ex. PW-2/D. In the cross-examination, he admitted that both the said workers had been engaged in the Project which stood closed in the month of March, 2000 and for this reason, the workers also stood automatically disengaged. For getting the petitioner reengaged, they have not received any orders from the Court. The department had not engaged any junior to the petitioner on its own. The labourers, who have been working, had been engaged on the orders of the Court.

14. Shri Satish Kumar (RW-1) has stated that the petitioner had been engaged on 1.2.1996 in the Project as daily wager in order to do seasonal work. He had not been engaged on 2.2.1996. The petitioner had also not been assigned the work of Mali. After the completion of the work of the Project, all the workers stood disengaged automatically. Shri Ginder Singh had to be reengaged on

the orders of the Tribunal. The petitioner had also filed O.A No. 1995 of 2000, before the Tribunal which was dismissed for want of jurisdiction. The department had never agreed to reengage the petitioner. The daily wagers who had to be reengaged, were on the orders of the Tribunal. In the crossexamination, he had admitted that the petitioner had been appointed as beldar on 2.2.1996 and that when his services were disengaged, no notice was issued. He further admitted that the petitioner had not been engaged for seasonal work. There is further admission that the petitioner had not been engaged for Project.

15. When regard is given to the cross-examination of RW-1 Shri Satish Kumar, it is abundantly clear that he admits that the petitioner had not been engaged, particularly, for the Project. His evidence further goes to show that before disengaging his services, he had neither been issued any notice nor paid compensation. Ex. PW-1/A is the mandays chart of the petitioner which goes to show that in the calendar year preceding his termination, he had completed 240days. There is also no evidence, on record, which could go to show that while engaging the services of the petitioner, he had been told that his engagement was only for a particular period or till the life of the Project. In these circumstances, when the petitioner had completed 240 days in the calendar year preceding his termination, the respondents were required to have complied with the provisions of section 25-F of the Act. It has also been made clear by the petitioner that when his services had been disengaged, he had filed case/O.A before the Tribunal which stood dismissed for want of jurisdiction. Thereafter, he raised a demand notice and in consequence thereof, a reference came to be made to this Court, by the appropriate government. The evidence, which has been led by the petitioner, further goes to prove that S/Shri Ginder Singh and Jeet Ram had also been disengaged along-with the petitioner but later on, they stood reengaged upon the order of the Court, the copies of which are Ex. PW-2/C and Ex. PW-2/D. In the evidence of Sunder Lal (PW-2), it has come that both the said workers are still in job and that their mandays chart are Ex. PW-2/A (Shri Ginder Singh) and Ex. PW-2/B (Shri Jeet Ram). Considering all the facts and circumstances, the petitioner has been able to prove, on record, that his services had been illegally terminated/disengaged by the respondent in violation of the provisions of section 25-F of the Act. Accordingly, I hold so.

16. The next question which arises for determination is for what benefits, the petitioner is entitled to. Since, S/Shri Ginder Singh and Jeet Ram have been reengaged by the respondents, this clearly goes to show that the contention of the respondents that the services of the petitioner and other workers had been engaged during the life time of the Project, is not correct. Already, I have observed that even there is no such document, having been brought on record by the respondents, which could go to show that at the time of engaging the services of the petitioner and other workers, they had been made known that their engagement was only for a specific period or coterminus with the life of the Project. I may also like to point out that since S/Shri Ginder Singh and Jeet Ram, who had also been disengaged along-with the petitioner, have been reengaged on the order of the Tribunal, the petitioner also deserves to be reinstated in service. Ld. Counsel for the petitioner has submitted that the petitioner could be reengaged along-with back wages. Although, a plea has been taken by the petitioner that after his termination, he is not gainfully employed but when regard is given to his statement as PW-1, he has not stated even a single word that after his disengagement, he is not gainfully employed. Undoubtedly, Ld. Counsel for the petitioner has relied upon Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others (2013) 10 SCC 324 in support of his contention that the petitioner is entitled to full back wages but in my view the facts of the present case are entirely different because the reference which has been made to this Court is dated 13.10.2010, whereas the petitioner had been terminated from service on 1.4.2000. The petitioner cannot be granted back wages for his own lapses/mistake in having taken recourse before the Tribunal than to have approached this Court which had the jurisdiction to decide his case. In number of judgments of the Hon'ble Apex Court, it has been held that in the event of reinstatement of a worker, the grant of back wages is not automatic. The Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla has ruled

that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".

17. Consequently, for what has been stated and observed above, the petitioner is held entitled to be reinstated in service with continuity and seniority but without back wages. Thus, both these issues are decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and the petitioner is ordered to be reinstated in service forth-with with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 3rd March, 2014 in the presence of parties counsels.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP AT NALAGARH

Ref no. 101 of 2009
Instituted on 18.11.2009
Decided on 17.1.2014

Pushpa Devi W/o Shri Purshotam Singh C/o Satish Kumar, President HP AITUC, House no. 276, Phase III, Housing Board, Baddi, District Solan, HP.

..Petitioner.

VS.

The Managing Director M/s Hemma Herbs Pvt. Ltd., 39 Industrial Area, Barotiwala, District Solan. HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.C Bhardwaj, AR.

For respondent: Shri Rajeev Sharma, Advocate.

AWARD

The reference for adjudication, is as under:-

"Whether termination of the services of Smt. Pushpa Devi W/o Shri Purshotam Singh by the management of M/s Hemma Herbs Pvt. Ltd., 39 Industrial Area, Barotiwala, District Solan. HP w.e.f. 5.6.2008, without following the provisions of Industrial Disputes Act, 1947, is legal and justified? If not what relief of service benefits including re-instatement, back wages, seniority and compensation the aggrieved workman is entitled to?"

2. Briefly, the case of the petitioner is that on 5.6.2006, she was employed by the respondent company (hereinafter referred as respondent). At the time of her engagement, the manager of the respondent had got signed some blank papers from her. With ulterior motive, the respondent had terminated her services, orally, since 5.6.2008. Preceding twelve calendar months from the date of her termination, she had completed 240 days. It is further averred that the respondent had made a cock and bull story by alleging that she had submitted her resignation. As a matter of fact, her signatures, which had been obtained on the blank papers, at the time of her engagement, might have been used by the management of the respondent in order to fabricate/forge her alleged resignation. In case, she had resigned from service and that her alleged resignation had been accepted, such documents could have been brought to the notice of Labour-cum-Conciliation Officer, Baddi, which the respondent did not produce. In this way, without having complied with the provisions of section 25-F and 25-N, her services had been illegally terminated/retrenched. There is also violation of section 25-H of the Act because after her retrenchment, the respondent had engaged fresh hands/workers. Against this backdrop, a prayer has been made for her reengagement along-with full back wages and other incidental benefits like continuity in service and seniority.

3. By filing reply, the respondent has contested the claim of the petitioner, on having raised various preliminary objections, including maintainability. On merits, it has been asserted that the petitioner had submitted her resignation on 4.6.2008, which was accepted by the management of the respondent. Thereafter, she was paid her full & final financial dues vide cheque no. 702678 dated 6.6.2008, drawn at ICICI Bank Ltd., for a sum of Rs. 4557/- . It is further averred that as per the certificate issued by the concerned Bank, the petitioner had got that cheque encashed/cleared. In this way, on having resigned from service, the petitioner, accepted the financial dues which were to be paid to her. It has been denied that her resignation had been forged/fabricated, as alleged. In case, there had been any forgery/fabrication, on the part of the respondent, regarding her resignation, she could have made a complaint, in the regard, to the co-workers or the union which exists in the factory. It has been further clarified that there has been workers union in the factory of the respondent and there are also offices of SDM, Labour Inspector, Dy. SP etc., situated at Baddi. The question of retaining junior or senior does not arise because the petitioner had resigned from service. It is further maintained that the petitioner is gainfully employed and earning more amount than what she was getting while in service of the respondent. Other allegations denied.

4. By filing rejoinder, the petitioner has reaffirmed her own allegations by denying those of the respondent.

5. On the pleadings of the parties, the following issues were struck on 18.5.2011.

1. Whether the termination of the services of Smt. Pushpa Devi w.e.f. 5.6.2008 by the management of M/s Hemma Herbs is illegal and unjustified? ..OPP.

2. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

7. For the reasons, to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue no.1	No.
Relief.	Reference answered against the petitioner and in favour of respondent as per award.

Issue no. 1.

8. Whereas, the contention of the petitioner is that her services had been terminated, w.e.f. 5.6.2008, in contravention of the provisions of the Act, but the defence plea is to this effect that on 4.6.2008, she had submitted her resignation, which was accepted by the respondentmanagement.

9. The Ld. Counsel for the petitioner has urged that the alleged resignation had been forged/fabricated by the management of the respondent by using her signatures, which had been got obtained at the time of her engagement/joining the services. He further submitted that if the petitioner had submitted her resignation, then in all probabilities, the alleged full and final settlement was to take place in her presence and not by sending the same through chequer. He further contended that even the alleged resignation had not been accepted by the respondent. The Ld. Counsel has also drawn my attention to the alleged resignation which contains the thumb impressions of the petitioner. He further submitted that since the petitioner had demanded over time, for this reason, her services had been terminated in contravention of the provisions of the Act. He further urged that if the petitioner had submitted her resignation, even then, she could have been taken back in service, during conciliation proceedings.

10. On the other hand, Ld. Counsel appearing on behalf of the respondent has urged that from the evidence, on record, it is proved that the petitioner had resigned from service and that she had not been terminated, as alleged. In case, her signatures had been got obtained on blank papers, at the time of her engagement/appointment, regarding the same she could have made a complaint to the union of the workers or even to the higher authorities, posted at Baddi including SDM, Dy. SP etc. Even, at the time of raising demand notice, she could have stated/mentioned that her signatures had been got obtained at the time of her appointment/engagement, which had been used by the management of the respondent in forging/fabricating her resignation. Ld. Counsel further submitted that when the reply to the demand notice, raised by the petitioner, had been filed, in it, the respondent took a stand that she had resigned with her sweet will and also accepted full & final financial dues, sent to her, through cheque. Ld. Counsel also submitted that from the resignation dated 4.6.2008, it is abundantly clear that it had been accepted by the management of the respondent. Apart from this, when the full & final financial dues had been sent to the petitioner, through letter dated 6.6.2008, it had been brought to her notice that her resignation stood accepted and the full & final financial dues, in the sum of Rs. 4557/-, were being sent to her, through cheque. Ld. Counsel further contended that it is not the case of the petitioner, as set out in the demand notice, that since she had demanded over time allowance, for this reason, her services were terminated.

11. The question which is required to be determined by this Court is whether the petitioner had resigned from service by submitting her resignation dated 4.6.2008, or, that her services had been terminated, by the respondent, in contravention of the provisions of the Act. On the record, the respondent has brought the demand notice which had been raised by the petitioner under section 2-A of the Act. Undoubtedly, this demand notice has not been exhibited but its perusal goes to show that, in it, the petitioner had not alleged that her signatures, which the management of the respondent had got obtained, at the time of her engagement/appointment, had been used for getting forged/fabricated her alleged resignation. Undoubtedly, it has been urged on behalf of the petitioner that if the petitioner had submitted her resignation, then, the respondent was required to produce record in this regard, before this Court. Here, I may mention that to the demand notice, raised by the petitioner, the respondent had filed written submissions, wherein, it had been asserted that the petitioner had tendered her resignation, with her sweet-will, on 4.6.2008, and that the same was accepted by the management of respondent. In this reply, it has also been mentioned that she had been paid her full & final financial dues through cheque. Thus, the contention of the Ld. Counsel for the petitioner, in this regard, does not hold good.

12. When, the petitioner appeared in the witness box, as PW-1, she filed her affidavit in chief examination, wherein, she supported all the facts, as narrated in her claim petition, on all material particulars, on oath, including that on blank papers, her signatures had been got obtained, by the management of respondent, at the time of her engagement/appointment, which had been used for fabricating/preparing her resignation. The amount of Rs. 4557/-, which had been received by her, pertained to arrears of overtime and earned wages and that she had never entered into any settlement with the respondent. In the cross-examination, she denied that resignation mark X bears her thumb impression in red circle A and that she had been paid Rs. 4557/-, by way of full & final settlement. Cheque, copy of which is Ex. R-1, had been received by her husband and that she had encashed it. Along-with that cheque, she had not received any letter. She denied that this letter had been received by her husband, Purshotam Singh. She further made it clear that the cheque and registered letter had been received by her family members. She denied that the cheque, in question, had been sent along-with covering letter, copy of which is mark X-3. She further denied to have resigned, on her own. She expressed her ignorance that when she was working in the factory, there was workers union. She explained that, at present, there is a workers union in the factory. Against the respondent/factory, she did not lodge any complaint, in the Police Station, regarding the fabrication of her resignation. However, in this regard, she had made a complaint, in writing, to the Labour Officer. The copy of that complaint she had not placed on record. To other authorities, including president of the union, she did not address the copy of that complaint. She denied that at present, she has been working in a factory at Baddi. During the period of her service, the management of the respondent had not fabricated any resignation of other worker.

13. Accordingly to Shri Pradeep Verma (RW-1), the petitioner, who had been working in their factory, had submitted her resignation on 4.6.2008, on her sweet will, the copy of which is Ex. R-2. This resignation bears the signatures of Shri Ravinder Kashi Nath, encircled A, who at that time was the factory manager, which he identifies. Vide letter dated 6.6.2008, Ex. R-3, the petitioner had been sent her full & final financial dues through post, the postal receipt of which is Ex. R-4. The detail of the full & final financial dues, is Ex. R-5. Ex. P-1, is the copy of the cheque. Ex. R-6, is the copy of the detailed statement of the bank which shows that the cheque had been cleared by ICICI Bank and the amount was credited in the account of the petitioner. He further stated that the petitioner, on having resigned from service, had come after few days and requested to take her back in service. For want of vacancy, she could not be reengaged. In the cross-examination, he stated that on Ex. R-2, within red circle B, the name of Pushpa Devi has been mentioned and her signatures are below it. He denied to have got obtained her signatures on blank papers, earlier. He admitted that on the impression of one thumb impression, LTI has been written and on the other, RTI. He admitted that both the thumb impressions do not tally. He denied that the thumb impressions are not that of Pushpa Devi (petitioner). Signatures encircled red 'A' had not been signed in his presence. Even, encircled 'C' the signatures of Rajesh Dhiman, had not been signed in his presence. He denied that Ex. R-2 had been fabricated. Letter, Ex. R-3, had been sent to Pushpa Devi (petitioner), for the reason that she had told that she was to go to her village. Even, in order to prepare the cheque, sometime was required to be taken. Thus, at the instance of the petitioner, it had been sent on the next day along-with letter Ex. P-3. He denied that as per Ex. R-5, the petitioner had been paid unpaid wages for the month of May. He further clarified that even the money, for the month of June, has also been shown in this document. A salary register is being kept by them. He denied that the petitioner had not been kept in service, willfully, because she is the activist of the union. All the documents, they had produced before the Conciliation Officer. He denied that all the documents had been prepared by them after the conciliation proceedings.

14. The respondent has also examined Shri Aveneesh Shukla (RW-2), who in his affidavit Ex. RA has stated that the petitioner had submitted her resignation on 4.6.2008, and that she had been paid full & final financial dues vide cheque. He also stated that there are about hundred workers in the factory and that there is also a workers union. The resignation of the petitioner had

been accepted by the respondent. Thus, there was no question of terminating her services. In the cross-examination, he stated that now they are not ready to reengage the petitioner because she had resigned. On resignation letter, Ex. R-2, he cannot recognize/identify the signatures of the petitioner. He denied to have got obtained her signatures on blank paper at the time of her engagement/appointment. He further denied that the thumb impression of the petitioner had been got obtained on blank paper. Ex. R-5, does not bear the signatures of the petitioner. He denied that Ex. R-5, is not full & final settlement of financial claims of the petitioner. He denied that Ex. R-5, is the document pertaining to minimum wages arrears and salary of the petitioner for the month of May. Personally, the petitioner had not received the cheque of full & final financial dues. The same had been sent through registered post with AD. Only, Ex. R-2 had been signed by the petitioner and not other documents, which have been exhibited. He denied that the petitioner had kept on going to the factory till 12.6.2008, but she was denied entry by the respondent. They have employed so many workers. Further, explained that after the resignation of the petitioner, they were employed. He cannot say as to whether the petitioner is gainfully employed, these days, or not.

15. From the evidence of the petitioner (PW-1), it is revealed that cheque, copy of which is Ex. R-1, had been received by her husband and that the same she had got encashed. Although, she has denied to have received any letter along-with cheque but her such version, on this score, cannot be believed. It has been stated by Pradeep Verma (RW-1), that full & final financial dues had been sent to the petitioner, along-with letter Ex. R-3, the postal receipt of which is Ex. R-4, through cheque, copy of which is Ex. R-1. Although, It has been urged on behalf of the petitioner that there is no material, before this Court, that the alleged resignation of the petitioner had been accepted but this contention of Ld. Counsel carries no weight particularly when regard is given to Ex. R-2 (resignation), which clearly goes to show that it had been accepted on 5.6.2008, by the respondent-management. Even, letter Ex. R-3, dated 6.6.2008, which had been sent to the petitioner, through post, the postal receipt of which is Ex. R-4, along-with cheque, copy of which is Ex. R-1, also goes to show that her resignation dated 4.6.2008, had been accepted, by the management of the respondent, on 5.6.2008 and that she was being sent full and final financial dues. Ex. R-6, statement of transaction, further makes it clear that the amount, which had been sent to the petitioner, through cheque, copy of which is Ex. -1, had been encashed her on 22.7.2008. Although, the contention of the petitioner is to this effect that this cheque had been got encashed for the reason that it pertained to her unpaid wages for the month of May but this fails to convince this Court particularly for the reason that if the services of the petitioner had been terminated, she would not have accepted the amount, in question, because according to her, she had been terminated in contravention of the provisions of the Act. The evidence, on record, further goes to show that there is a workers union in the factory of the respondent and approximately hundred workers work there. If the resignation of the petitioner had been forged/fabricated by the management of the respondent, she, in all probabilities, was to lodge a complaint, in this regard, to the union of the workers. In this regard, she would have also made complaint to the Labour Inspector and other government authorities, posted at Baddi. The evidence of the petitioner (PW-1), further goes to show that during the period, she had remained in service with the respondent, no resignation letter of any worker had been fabricated/forged by the management of the respondent. Even, she did not examine any other co-worker in support of her contention that her resignation had been forged/fabricated by the respondent management. Moreover, if she had not resigned and that her services had been illegally terminated by the respondent, she was to make mention in her demand notice that the management of the respondent had fabricated her resignation letter by using her signatures, which had been got obtained at the time of her engagement/appointment. In these circumstance, there is convincing and reliable evidence, on record, which goes to show that the services of the petitioner had not been terminated by the respondent but in fact, she had submitted her resignation, copy of which is Ex. R-2, which had been accepted by the management of the respondent and also conveyed to the petitioner as per letter Ex. R-3.

16. Consequently, for my discussion, foregoing, I hold that the petitioner has failed to prove that her services had been terminated, by the respondent, in an illegal and unjustified manner. On the contrary, it duly stands proved, on record, that she, on her own, had resigned from services and her resignation was accepted by the respondent-management. Thus, my answer to this issue is accordingly in "no".

Relief.

As a sequel to my findings on the aforesaid issue, the claim of the petitioner deserves to be dismissed and accordingly I dismiss it with the result, the reference, which has been made to this Court, by the appropriate government, stands answered against the petitioner and in favour of respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 17th Jan., 2014.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla
Camp at Nalagarh.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 110 of 2009.
Instituted on 18.12.2009.
Decided on 13.3.2014.

Rajit Kumar S/o Shri Ishwar Dass R/o Village Kot, P.O Jabli, Tehsil Kasdauli, District Solan, HP.

..Petitioner.

VS.

1. The General Manager M/s Cosmo Ferries Ltd., Jabli, District Solan, HP.
 2. Gulshan Kumar (Contactor) R/o Village Bayla, P.O Nayagram, District Solan, HP.
- ..Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: None.

For respondent No.1: Shri Rahul Mahajan, Advocate.

For respondent No.2: Ms. Veena Sood, Advocate.

AWARD

The reference for adjudication, is as under:-

"Whether termination of the services of Sh. Rajit Kumar S/o Shri Chattar Singh by (1) Managing Director M/s Cosmo Ferries Ltd., P.O. Jabli, District Solan, HP., (2) Shri Gulshan Kumar (Contactor) R/o Village Bayla, P.O Nayagram, District Solan, HP w.e.f. 17.7.2008, without complying the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, what relief of back wages, service benefits and amount of compensation the above aggrieved workman is entitle to?"

2. The case of the petitioner is that he was initially engaged as helper in the month of September, 2006, in the pay scale of Rs. 2250/- per month, in the department of Research Development by the respondents. To the satisfaction of his superiors, he kept on discharging his duties by completing 240 days in a calendar year w.e.f. September, 2006 to 17.7.2008. He was also legitimately expecting that his services could not be disturbed by the respondents and he would also be entitled for the benefits, like minimum wages, w.e.f. 1.1.2008, as per government notification, adopted by the respondents, as well as over time, EPF benefits etc. Even, after the elapse of month of June, 2008, the respondents did not adhere to his request. In these circumstances, he raised demand to the respondents for the enforcement of the Labour Law. Instead of considering his genuine request, the respondents orally terminated his service w.e.f. 17.7.2008 and that too without seeking prior permission of the Labour Department. Against his illegal termination, he raised industrial dispute by serving demand notice but of no avail. It is further alleged that in the respondent factory there are more than 500 workers out of whom, the respondents have terminated, about 160 workers, without assigning any reason. Since, there had been more than 100 workers in the factory of the respondent, it was required to have complied with the provisions of section 25-N of the Act. It is further said that the respondents have also violated the provisions of section 25-G & H of the act by engaging fresh persons. Against this back-drop a prayer has been made for his reinstatement along-with all consequential benefits including back wages.

3. The petition has been contested by respondent no.1, on having raised preliminary objection including maintainability as there is no relationship of employee and employer between petitioner and respondent no.1. The claim of the petitioner has also been assailed by asserting that he was the worker of respondent no.2, who had deputed him to do the job of loading and unloading, with respondent no.1, under the Contract Labour (Regulation and Abolition) Act, 1970. It is further maintained that the replying respondent has employed between 200 to 250 workers and in addition to them, it has also employed labour, through contractor, for loading and unloading work, housing keeping, gardening etc. It has further been clarified that the petitioner was the workman of Gulshan Kumar (Labour Contrctor) and for this reason, there had been no relationship of employee and employer between the parties. Other allegations denied.

4. Respondent no.2, Gulshan Kumar, also contested the claim of the petitioner on having raised various preliminary objections including maintainability. On merits, it has been asserted that the replying respondent had applied on 1.2.2006, to General Manager, M/s Cosmo Ferities for carrying out the work of loading and unloading and he was awarded the work on 6.1.2006. Thereafter, agreements dated 8.1.2007 and 1.1.2008, had been executed between them. After 31.3.2009, the contract for providing contract labour was not extended. It is further maintained that the petitioner was being paid wages in terms of notification issued by the government of Himachal Pradesh. Further, the services of the petitioner had never been terminated by the replying respondent but, on his own, he left the job without any intimation. Other allegations either denied or admitted.

5. By filing rejoinder, the petitioner has reaffirmed his own allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 11.11.2011.

1. Whether the termination of services of petitioner by the respondents w.e.f. 17.7.2008, is in violation of the provisions of the Industrial Disputes Act, 1947?
..OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?
..OPP.

3. Whether the petitioner was the employee of respondent no.2 and there is no employee and employer relationship between the petitioner and respondent no.1?
..OPR-1.
4. Relief:

7. Heard. Material perused.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Issue no.3	Yes.
Relief.	Reference answered against the petitioner, per operative part of award.

Reasons for findings

Issue no.1 & 2.

9. Being interlinked, both these issues are taken up together for discussion and decision.
 10. It has been specifically alleged by the petitioner that on 17.7.2008, his services had been orally terminated in violation of the provisions of the Act. Be it stated that as per the contention of the petitioner, he had been engaged by respondent no.1. On the contrary, the plea, which has been taken by the respondents is that in fact, the petitioner had been engaged by respondent no.2 and that as per the contract between respondent no.1 & 2, his services were provided to respondent no.1, for loading and unloading work. This goes to show that initial, burden was on the petitioner to have proved that he had been engaged by respondent no.1 and not by respondent no.2 and further that it was respondent no.1, who had terminated his services on 17.7.2008, in contravention of the provisions of the Act. Although, several opportunities were given to the petitioner, in order to lead his evidence, but he failed to do so. Ultimately, on 13.3.2014, when his case was fixed for his evidence as last opportunity, neither he appeared before this Court nor produced any other witness/witnesses. In these circumstances, this Court had been left with no other alternative but to answer the reference on the basis of the material which is available before it. Undoubtedly, the petitioner had alleged that his services were terminated on 17.7.2008, in contravention of the provisions of the Act, but in support thereof he has not led any evidence. For his failure to have led evidence, in support of the issues, the onus of which lie upon him, I have no hesitation in holding that he has failed to prove that on 17.7.2008, his services had been illegally terminated by the respondent no.1, as his case is, in contravention of the provisions of the Act. Since, he has failed to prove issue no.1, issue no.2 becomes redundant.

11. Consequently, for what has been stated and observed above, whereas issue no.1 is decided in negative, issue no.2, has become redundant.

Issue no. 3

12. When, regard is given to the reply filed by respondent no.1, it is revealed that the petitioner was the employee of respondent no.2 and that for this reason, there has been no relationship of employee and employer between the parties. It is true that on this issue, respondent no.1 has also not led evidence for the reason that the petitioner had failed to lead evidence, in support of the issues, the onus of which was upon him, but when the stand taken by respondent no.2, in his reply, is considered, it is highlighted that as per him, the petitioner was his employee and not that of respondent no.1. When, there has been an admission on the part of respondent no.2, that the petitioner was his employee/worker, I am of the view that on the basis of such admission, it

can be said that respondent no.1, succeeds in proving this issue to which my answer is accordingly in affirmative.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is dismissed with the result the reference is answered against him and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today this day of 13th March, 2014.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA CAMP AT NAHAN

Ref No. 74 of 2010.
Instituted on: 26.5.2010.
Decided on: 21.3.2014.

Shyam Singh S/o Shri Darshan Singh R/o Village Garih Wala, P.O Dhaulakaun, Tehsil [paonta Sahib, District Sirmour, HP.

..Petitioner.

Versus

1. Mount Everest Mineral Water Ltd., Dhaulakaun, Tehsil Paonta Sahib, District Sirmour, HP through it Managing Director, ITTS House 5th Floor, 28-K, Dubhasg Marg, Mumbai.
2. Shri Subhash Walia, Deputy General Manager (works) Mount Everest Mineral Water Ltd., Dhaulakaun, Tehsil Paonta Sahib, District Sirmour, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri D.C Khanduja, Advocate.

For respondents: Shri P.K Chaudhory, Advocate.

AWARD.

The reference for adjudication is as under:

“Whether the termination of services of Shri Shyam Singh S/o Shri Darshan Lal by the Factory Manager, M/s Mount Everest Mineral Water Ltd., Village Dhaulakaun, Tehsil Paonta Sahib, District Sirmour, HP w.e.f. 30.9.2008, on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry as alleged by the workman is proper and justified and whether the punishment awarded is disproportionate to the offence committed by the workman? If not, what relief of back wages, service benefits and compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner is that he was serving, as workman in Mount Everest Mineral Water Ltd. Dhaulakaun, Tehsil Paonta Sahib District Sirmour, HP (hereinafter referred as respondent no.1). On false ground of theft, an enquiry had been initiated against him regarding some case. The enquiry was conducted not only on false charge of theft but it was also an eye wash. In fact, no fair opportunity was granted to him. So much so, he was not allowed to lead his evidence. Being the employee of the respondents, the enquiry officer, was biased against him. Although, he (petitioner) was allowed to defend himself through a worker but he was neither competent nor having the knowledge to properly defend him. For this reason, he failed to cross-examine the witnesses, who had been examined by the respondents, at the time of the enquiry. On the basis of enquiry, his services were terminated on 3.9.2008 (**should have been 30.9.2008**). At that time, he was receiving salary of Rs. 7000/- per month. He had also completed 240 days in the service of respondents. Thus, his termination had been in violation of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as Act) because neither any compensation was given to him nor the respondents gave any information to the state government. Against this back-drop, a prayer has been made to set aside his termination order dated 3.9.2008 (**should have been 30.9.2008**) and to reinstate him in service along-with all the benefits.

3. The petition has been contested on the plea that on 1.10.2005, the petitioner had been employed in the services of respondent company as helper and his last drawn wages were Rs. 3800/- per month. In his capacity, as helper, he (petitioner) had been performing the duties of assisting other employees in the production department, lifting boxes from one place to another etc. On 15.7.2008, he was on his duty in the 2nd shift from 2.00 PM to 10.PM. On the completion of his duties, he left his work place through the main gate and re-entered the premises through rear gate situated near the agriculture farm. In fact, the said rear gate, is not the regular gate for ingress/egress of any workmen/general visitors. At that time, S/Shri Geeta Ram and Trilok Chand, who had been on security duty, on having noticed a torch light near the said rear gate of the factory got alert and ran towards that side. They had seen the petitioner while lifting one fully filled bag and in doing so, he had been caught red handed. Since, he had been recognized by the security personnel, he immediately abandoned the bag near rear gate and ran away. It is alleged that when the bag was opened by the said security personnel, in the presence of workmen and other staff, the same was found to have contained mangoes, spanners and keys. Consequent upon the revelation made by the security personnel, the petitioner had been issued a show cause notice dated 16.7.2008, whereby he was called upon to submit his written explanation within three days from its receipt. In his reply, he had explained the circumstances under which the incident had taken place and also tendered an apology. Since, the reply to show cause notice had not been received by the respondents, till 25.7.2008, the petitioner was issued charge-sheet dated 25.7.2008, narrating therein the incident of 15.7.2008, which amounted to a serious misconduct under clause 66 (7) of the Standing Orders of the company. On the receipt of the same, he was required to file his written explanation within 48 hours. It is alleged that the charge-sheet had been received and acknowledged by the petitioner on 28.7.2008. To the same, he submitted his reply dated 30.7.2008. In para no.2 of his reply, he categorically admitted the act of theft, committed by him by further explaining that he was required to have sought the permission from the company (respondents) in order to collect the mangoes, which he failed to take. His clear-cut admission amounted to a serious misconduct, on his part, regarding the property of the company. Having found his reply to be not satisfactory, the respondent company, vide its letter dated 30.7.2008, informed him that it had been decided to hold an enquiry, into the charges, levelled against him in the charge-sheet, already issued. It is alleged that one Shri H.S. Chowdhary, the works manager of respondent company had been appointed as an enquiry officer. Before commencing the enquiry, the petitioner had been explained, in detail, the procedure to be followed in the enquiry, which had been understood by him. The petitioner had also been given sufficient opportunities to put-forth his case. The statements and documents which had been filed by him were considered by the enquiry officer and taken on record. From his letter dated 28.8.2008, it is quite clear that he had been given

opportunities to file his version, which was taken on record by the enquiry officer. Even, in his said letter dated 28.8.2008, he had admitted the act of theft. It is further averred that in the enquiry, the petitioner had been allowed to be represented by his representative. The day to day proceedings had been recorded in Hindi language and copies thereof were given to the petitioner, which were duly accepted by him. At the time of enquiry, all the principles of natural justice had been complied with by affording opportunities to the petitioner. It is further averred that during enquiry, the petitioner had not raised any grievance, whatsoever, with regard to the conduct of the enquiry officer. The proceedings of the enquiry had commenced on 5.8.2008 and the same were concluded on 11.9.2008. The enquiry officer, in his report, had held the petitioner to be guilty of all the charges which were levelled against him vide chargesheet dated 25.7.2008. The enquiry proceedings, report and findings of the enquiry were sent to the petitioner for his comments vide letter dated 24.9.2008, which were duly received by him on 25.9.2008. The respondents did not receive any reply from the petitioner to the enquiry report as well findings of the enquiry officer. Having considered the past record of the petitioner, as per which, he had been issued warning memo dated 9.6.2007, for remaining absent un-authorizedly, it was decided to impose the punishment of dismissal and accordingly, his services were terminated vide letter dated 30.9.2008. It is further averred that on having followed the due process of law, the services of the petitioner had been terminated. Thus, the action of the respondent company is proper, legal and valid. It has been specifically denied that the enquiry officer was biased against the petitioner and that he was not allowed to defend his case through the worker who was not competent/knowledgeable. Other allegations denied.

4. By filing rejoinder, the petitioner reaffirmed his own allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the followings issues which were struck off by this Court on 19.3.2010.

1. Whether services of Shri Shyam Singh workman have been terminated in an illegal manner in violation of provisions of Industrial Disputes Act as alleged? ..OPP.

2. If issue No.1 is proved in affirmative, whether petitioner is entitled for back wages, service benefits and compensation as prayed? ..OPP.

3. Relief.

6. It is to be mentioned that in support of their respective contention, both the parties have submitted written arguments.

7. Besides having considered the written submissions, made on behalf of the parties, I have also heard their learned counsel. The material, on record, carefully perused.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue No.1	No.
Issue No.2	Becomes redundant.
Relief.	Reference answered against the petitioner and in favour of respondent per operative part of award.

Reasons for findings***Issue No.1***

9. The contention of the petitioner is that his services had been terminated in an illegal manner in violation of the provisions of the Act. When regard is given to the facts, narrated in the petition, it is revealed that during enquiry proceedings, he had not been afforded opportunity to properly defend himself. Even, he was not allowed to adduce evidence in his defence. Further, as the enquiry officer was the employee of the respondent company, for this reason, he was biased against him. The worker, through whom he was allowed to defend his case, was not competent enough to cross-examine the witnesses effectively.

10. On the other hand, the contention of the respondents is to this effect that since the petitioner had been found to have committed a grave misconduct by committing theft of the mangoes, spanners and keys, belonging to the company, he was charge-sheeted and on enquiry, which was got conducted in a fair and legal manner, the charges against him were found to have been established/proved and accordingly, his services were terminated vide letter dated 30.9.2008. While holding the enquiry, the enquiry officer had followed the principles of natural justice and at no point of time, the interest of the petitioner had been jeopardized.

11. From the facts, which have come on record, it is clear that before terminating the services of the petitioner vide letter dated 30.9.2008, an enquiry had been got conducted by the respondent from one Shri H.S Chaudhory. It is also not a disputed fact that before getting the enquiry held, the petitioner had been served show cause notice dated 16.7.2008, to which, he had filed his reply dated 25.7.2008. The petitioner also does not dispute that he had been issued chargesheet dated 25.7.2008, which he had replied vide reply dated 30.7.2008. From the aforesaid admitted facts, it is abundantly clear that when it had been reported by the security personnel, to the respondent company that on 15.7.2008, petitioner had been found with a bag containing mangoes, spanners and keys, a show cause notice dated 16.7.2008, had been issued to him, which was to be replied within three days but reply to the same had been filed by the petitioner on 25.7.2008. Since, his reply had not been received within three days, from the receipt of notice dated 16.7.2008, the respondent company had issued a chargesheet dated 25.7.2008, against him, to which the petitioner replied on 30.7.2008. It is also not a disputed fact that when the reply of the petitioner, to the chargesheet, was not found to be satisfactory, he was informed, vide letter dated 30.7.2008, in this regard, and further that the respondent company had decided to hold an enquiry into the charges levelled against him and that Shri H.S Chowdhary, works manager, was to be the enquiry officer to conduct the enquiry into the charges.

12. Now, this court is required to ascertain as to whether the petitioner had not been granted opportunities to defend himself and further that the enquiry officer was biased against him.

13. When the petitioner appeared in the witness box as PW-1, he filed his chief examination by way of affidavit Ex. P-1, wherein, he supported all the facts as narrated in the petition and further that no fair opportunity had been provided to him during enquiry proceedings. The enquiry officer had got obtained his signatures on the ordersheets, under pressure. It has also been stated that when he realized that the enquiry officer was holding the enquiry in biased manner, he made a representation to respondent to appoint some other impartial enquiry officer which request was ignored and not looked into. It has also been stated that on 15.7.2008, at about 10.00 PM, he had not been found to have committed the theft of mangoes, spanners and keys. In fact, a false case was manipulated against him, in order to remove him from the job. It is also stated that he had collected the mangoes, which had fallen on the ground, considering them to be waste material. Since, he had forgotten to take the bag, containing mangoes, from the main gate, he went to the rear gate to collect the same but Shri Trilok Singh did not allow him to carry the bag. He had

not put the keys and spanners in the bag. He does not know how the keys and spanners were found in the bag. He had not committed any theft of keys and spanners. In the cross-examination, he admitted to have received chargesheet dated 25.7.2008, to which the reply was filed. He had also received notice regarding the holding of domestic enquiry, from the company, as per which, Shri H.S Chaudhory, had been appointed as an enquiry officer. He used to sign the proceedings before the enquiry officer. The enquiry officer had also recorded his statement. He had produced Ram Pal from quality department in his defence. Said Ram Pal is his real brother. He had been afforded opportunity to cross-examine the witnesses of the management. Orally, he had raised objection before the enquiry officer. He had also made a representation to the company that enquiry officer should be changed as he was not acting fairly. The copy of said representation is Ex. P-1, which was forwarded on 19.9.2008, through post, the postal receipt of which is Ex. P-2, which is dated 22.9.2008. He admitted that on the completion of the enquiry, he had been issued show cause notice, which he did not reply. He had received the termination letter on 30.9.2008. Cheque in the sum of Rs. 7,961/- had been received by him on 15.10.2008, which was regarding the payment of dues. He denied not to have made any representation to the company that the enquiry officer was biased.

14. From the evidence of the petitioner, it is quite clear that he had participated in the enquiry and cross-examined the witnesses of the management. From his evidence, it is further borne out that the enquiry officer had also been giving to him the copies of enquiry proceedings/order-sheets. His evidence further makes it clear that after the completion of enquiry, he had been issued show cause notice. From his such evidence, it is abundantly clear that through show cause notice, he had been sent the enquiry report, as per which, he was found guilty for the charges levelled against him. The contention of the petitioner is to this effect that he was falsely implicated in a case of theft of mangoes, spanners and keys, for the reason that the company wanted to remove him from job. From the evidence of the petitioner, it is abundantly clear that he had been found, on the rear gate of the company, while in possession of a bag containing mangoes. He has denied that in the bag, he had kept spanners and keys. Here, it is to be noted that if the petitioner had not committed theft of the mangoes, spanners and keys, belonging to the company, there was no occasion for him to have tried to take the bag containing mangoes and alleged stolen articles (spanners and keys), from the rear gate.

15. In support of his case that there had been no spanners and keys in the bag containing mangoes, the petitioner has examined PW-2 Shri Trilok Chand. According to this witness, on 15.7.2008, at about 10.00PM, he was on duty, as security guard, and had checked the bag of the petitioner which was found to have contained mangoes. At that time, he had personally checked the bag and there was no key or panna, in the same. To Shyam Singh (petitioner) he had told to take the bag in the morning. One Shri Geeta Ram, who was also security guard, had also come on the spot and checked the bag which contained mangoes.

16. From the evidence of PW-2, it is revealed that at about 10.00PM, on 15.7.2008, the petitioner had been found while in possession of a bag containing mangoes. He has also stated that at that time Shri Geeta Ram, security guard, had also come. According to him, in the bag, there was no key or panna.

17. The respondents have examined Shri Subhash Walia, RW-1, who tendered in chief examination his affidavit. He further stated that Ex. RA/1, is the show cause notice dated 16.7.2008, Ex. RA/2, reply dated 25.7.2008, to show cause notice, Ex. RA/3 chargesheet dated 26.7.2008, Ex. RA/4, letter dated 30.7.2008, Ex. RA/5, letter of company dated 30.7.2008, Ex. RA/6, enquiry proceedings and RA/7, dismissal order dated 30.9.2008.

18. Shri Hari Singh (RW-2), has filed his affidavit in chief examination, in which he has stated that to the chargesheet dated 5.7.2008, he had conducted domestic enquiry in his capacity as enquiry officer. The enquiry had been conducted by following the principles of natural justice. During enquiry, the petitioner/worker had not filed any representation/letter for his removal. During enquiry, he had recorded the statement of witnesses. On having considered the same, it had been found that the allegations levelled against the petitioner/worker vide chargesheet dated 25.7.2008, had been duly proved. The copy of the enquiry report is Ex. RA. Ex. RB, is the copy of enquiry proceedings. After enquiry, he had sealed a packet containing two keys and one bag. In the crossexamination, he denied that when the bag, being carried by the petitioner, had been checked by Trilok Chand, it was not found to have contained any panna/key. He denied that under the influence of the management, without having afforded opportunity to the petitioner, he gave a wrong report against him.

19. Shri Yogi Ram (also RW-2), in his affidavit Ex. RW-2/A, has stated that on 15.7.2008, he was on night duty. At about 10.00 PM, on the rear gate of the factory, security personnel Rajinder Singh and Trilok Chand, had come to him and told that they had caught Shri Shyam Singh (petitioner), while being in possession of a bag on the rear gate of the factory. At that time, Shri Shyam Singh (petitioner) had gone. The security personnel had asked him to keep the bag in the boiler room in the supervision of some guard so that nobody could have tampered with the same. In the morning, at about 5.00 AM, in the presence of the staff members and other workers, the bag was checked and it was found to have contained mangoes and two keys. Thereafter, the bag was closed. At the time of domestic enquiry, he had appeared before the enquiry officer. In the cross-examination, he stated that affidavit Ex. RW-2/A, had been written at his instance. He denied that in order to remove the petitioner from service, the management had concocted a false story.

20. By examining Shri Yogi Ram (RW-3), the respondents have proved before this Court that in the bag, which had been recovered from the petitioner, two keys had also been found along-with mangoes. Here, I may mention that, on the record, the respondent has also brought the copy of enquiry report Ex. RA/6 and also the proceedings conducted by the enquiry officer. The perusal of the proceedings goes to show that during enquiry, statements of Geeta Ram, Rajinder Singh, Malkit Singh, Manoj Kumar, Rajinder Yadav, Yogi Ram and Ram Singh, had been recorded. All the witnesses had stated in one voice that from the bag, which had been opened in their presence, two keys/spanners had been recovered along-with mangoes. Their statements further go to show that they had been subjected the cross-examination by the petitioner. In his enquiry report Ex. RA/6, the enquiry officer had found all the charges levelled against the petitioner to have been proved. It has been admitted by the petitioner that the respondent had sent him the copy of the enquiry report along-with show cause notice, which he had not replied. Although, the contention of the petitioner is to this effect that he had made a representation to the respondent company for changing the enquiry officer as he was biased against him but when, material on record, is considered, it does not appear to this Court that he (enquiry officer) had acted in a biased manner. From the statement of the witnesses, which were recorded by him (enquiry officer), it has been proved that the bag which had been recovered from the petitioner was also having spanners and keys besides mangoes. I have also observed that the conduct of the petitioner to have been found with a bag on the rear gate of the factory, suggests that he was involved in the commission of theft of the properties belonging to the respondent company, may it be mangoes or spanners & keys. Since, he had been afforded an opportunity to defend himself through a worker and further that he had cross-examined the witnesses, examined by the management during the enquiry, I am of the view that the enquiry officer had followed the principles of natural justice. The services of the petitioner have been terminated, on the basis of the enquiry which was conducted against him, as per letter dated 30.9.2008. In these circumstances, it cannot be said that his services have been terminated in violation of the provisions of section 25-F of the Act, as alleged by the petitioner.

21. Consequently, for what has been stated and observed above, I without hesitation hold that the petitioner does not succeed in proving that his services had been terminated, in an illegal manner, in violation of the provision of the Act. Accordingly, my answer to this issue is in "No".

Issue no. 2

22. Since, issue no.1, has not been proved, this issue becomes redundant.

Relief.

As a sequel to my above discussion and findings on issue No. 1 & 2, the claim petition deserves to be dismissed and accordingly it is dismissed and in terms of the same, the reference stands answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 21st March 2014.

A.S JASWAL,
Presiding Judge,
Labour court, Shimla
Camp at Nahan.

App.43/2013

15.3.2014

Sh Surinder Singh V/s Sh Bali Ram Panday & others

15.3.2014:-

Present:- Sh A.K.Sharma , AR for the petitioner.
 None for the respondent.

In view of the statement of Shri A.K.Sharma AR for petitioner, already a compromise has been effected between the parties , Thus , this petition stands disposed of as having been compromised. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:-

15.3.2014

Sd/-
Presiding judge
Labour Court, Shimla.

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref no. 112 Of 2009.
 Instituted on 26.12.2009.
 Decided on. 1.4.2014.

Deep Ram S/o Shri Khiru Ram R/o Village Mandap, P.O Karyali, Tehsil Sunni, District Shimla, HP.

..Petitioner.

VS.

1. The Executive Engineer HPPWD Division, Kumarsain District Shimla, HP.
2. The Assistant Engineer, HPPWD, Sub Division Jalag, Tehsil Sunni, District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri J.R Sharma, Advocate.

For respondents: Shri Surinder Negi, Dy. DA.

AWARD

The reference for adjudication is as under:

“Whether the termination of services of Shri Deep Ram S/o Shri Khiru Ram by Executive Engineer, HPPWD Division Kumarsain District Shimla HP w.e.f. August, 2005 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority, service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner is that on 1.9.1994, he was initially appointed as daily waged beldar and remained posted at various stations/places, under the respondents. He continued to work till August, 2005, after which, his services were terminated, without assigning any reason. It is further stated that he had completed 240 days in twelve calendar months preceding the date of his oral illegal termination. Although, he had made several request for his reengagement but of no avail. On the contrary, the respondents retained many juniors to him and even engaged fresh hands namely Khem Raj, Kamal Parkash, Khem Chand, Bhopal Singh, Jeet Ram, Tej Ram, Reva Dass, Dalip Kumar and Tara Chand. Since, his services had been terminated in violation of the provisions of the Act, he is required to be reinstated along-with back wages, continuity of service etc.

3. The claim of the petitioner has been contested, on having raised various preliminary objections, qua maintainability. On merits, it has been asserted that the petitioner had been enrolled as daily waged labourer, in Jalag Sub Division, on muster roll for the month of Jan., 1995. He had worked till July, 2005, when he left the job voluntarily. Neither, he had been removed from service, orally, nor written termination order was served upon him. In the year 1995, he had worked for 231 days and completed 240days only in the years, 1999, 2000, 2002 and 2004. In the twelve calendar months preceding his abandonment, he did not complete 240 days. Although, he had been asked, many times, orally, to remain regular in his duties but he failed to pay any heed. After having remained, habitually irregular, to attend his work, he lastly left the same during July, 2005. Thus, it

cannot be said that his services had been terminated in violation of the provisions of section 25-F of the Act. Even, in the muster roll for the months of August, September and October, 2005, less number of beldars had joined the work than the sanctioned strength of each muster roll. This clearly goes to show that the petitioner had not joined the work, which was available, despite having been intimated through his colleagues. Even, his being irregular, in attending the work, is also apparent from the detail of mandays for the period commencing from Jan., 1995 to July, 2005. It has been denied that the petitioner had requested either in writing or orally to the respondent for his reengagement. As far as junior workers, as mentioned by the petitioner, are concerned, they were retained by the department in compliance to the order of Hon'ble Court. Other allegations denied.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 7.10.2010.

1. Whether the services of the petitioner w.e.f August, 2005 were terminated in an illegal and improper manner in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? ..OPP.
2. If issue no.1 is proved, to what relief of service benefits, the petitioner is entitled to? ..OPP.
3. Whether the claim of the petitioner is not maintainable as alleged? ..OPR.
4. Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

- | | |
|-------------|--|
| Issue no. 1 | Yes. |
| Issue no. 2 | Entitled to reinstatement in service forth-with with seniority and continuity but without back wages. |
| Issue no. 3 | No. |
| Relief. | Reference answered in favour of the petitioner and against the respondents, per operative part of award. |

Reasons for findings

Issue no.1& 2.

7. Whereas the contention of the petitioner is that his services had been illegally terminated by the respondents, the defence version is to this effect that he had abandoned the job in the month of August, 2005. The petitioner has also specifically averred that in the twelve calendar months prior to his alleged termination, he had completed 240 days and for this reason, his services had been terminated in violation of the provisions of section 25-F of the Act. His another contention is that persons junior to him are still in job and that the department had also engaged fresh hands after his alleged termination.

8. In his affidavit, the petitioner, while appearing in the witness box, as PW-1, has supported all the material facts as stated in the claim petition including that initially he had been appointed on daily wages basis on 1.9.1994 and worked till August, 2005, when his services were

terminated, orally. He further stated that his juniors have been retained in job as per their names mentioned in the affidavit. Ex. P-1, is the detail of daily paid beldars. In the cross-examination, he admitted that he had been engaged in the month of Jan., 1995 on muster roll and worked up to July, 2005. He denied to have left the job voluntarily. At the time of dis-engaging his services, the department had not given anything in writing. He denied to have abandoned the job, on his own. He further denied that the muster roll for the months of August, September, and October, 2005, had been issued and that despite the same, he did not report for work. There is further denial that he had been told regarding the availability of work. He further denied that despite having been intimated, regarding the availability of work, through colleague, he did not join the same. He admitted that the persons, mentioned in para no.2 of his affidavit, were retained after the orders of the Court. In the month of July, 2005, he had worked only for 2 days. He denied that even he had told the department, verbally, that he was not interested to do the work as he was ill.

9. Shri Yog Raj Sharm (RW-1) has stated from the summoned record that in the month of Jan., 1995, the petitioner had been engaged as daily wager at Jalgaon Sub Division and that till July, 2005, he worked as such. Thereafter, on his own, he had left the job. Ex. RW-1/A is the muster roll for the month of July, 2005, which is correct as per the original brought by him. Neither the department had disengaged the petitioner, orally, nor through writing. In fact, he had left the job, on his own. Ex. RW-1/B, is the copy of the mandays chart of the petitioner. In the year, 2005, the petitioner had worked only for 111 days. Even, when the petitioner had left the job, his name was not struck off from the muster roll for the months of August, September and October, 2005. In the muster roll for the period 1.8.2005 to 31.8.2005, the strength of the beldars has been shown to be 12 but against the same, only 10 did the beldari job. This muster roll is Ex. RW-1/C. In the muster roll Ex. RW-1/D, the strength of the beldars has been shown to 11 but against the same 9 beldars reported to work. Similarly, in muster roll Ex. RW-1/E, against sanctioned strength, only 9 workers had performed the job. Despite having been intimated through colleague, the petitioner did not come to join the job. In the cross-examination, he denied that the petitioner had been working since, 1.9.1994 and that before leaving the job, he had worked for 240 days. He admitted that the department had neither issued any notice to the petitioner nor paid compensation. He denied that the petitioner had not left the job. He admitted that the department had engaged beldars after the petitioner was allegedly disengaged from job.

10. Ex. RW-1/B, is the mandays chart of the petitioner. Its perusal goes to show that in the year, 2005, the petitioner had only worked for 111 days. In the months of December, November, October and September, 2004, the petitioner had worked for 20, 12, 22 and 25 days. From this mandays chart, it is abundantly clear that the petitioner had not worked for 240 days within a period of twelve calendar months preceding the date of his alleged termination of service. There is nothing, on record, which could go to show that he had completed 240 days in twelve calendar months preceding his termination. It has been held in **2009 (120) FLR 1007 an Civil Appeal no. 4468 of 2005 of Hon'ble Supreme Court incase titled as Relip Nagarpalika Vs. Babaji Gabhaji Thakore and others**:

"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

Since, the petitioner has failed to prove that he had worked continuously for 240 days in the preceding one year from the date of his termination, his alleged termination cannot be said to be in contravention of the provisions of section 25-F of the Act.

11. In his petition, the petitioner has alleged that persons junior to him, as per their names given in para no.5, are still working with the department. In his affidavit, which he filed in support of his evidence, he has mentioned the names of the persons, junior to him, who have been retained

by the department. He has also filed detail of daily paid beldars, which is Ex. P-1. From the evidence, on record, it is highlighted that the petitioner had been engaged as daily waged beldar in the month of Jan., 2005, as is also admitted by him (petitioner) when he appeared in the witness box as PW-1. Although, the contention of the respondent is to this effect that the petitioner had left the job on his own and did not return to join the same despite having been called through colleague but in this regard, there is no reliable evidence led by the respondent. Even, it has not been brought, on record, as to who was the beldar through whom the department had intimated the petitioner to join his duties. It is to be mentioned that in writing, the petitioner had not been intimated by the respondent to join his duties. From the affidavit, which has been filed by the petitioner, in support of his evidence, it is revealed that S/Shri Khem Raj, Kamal Parkash, Khem Chand, Bhopal Singh, Jeet Ram and Tej Ram were appointed by the department on 1.1.2000. Reva Dass was appointed on 1.7.2009, Dalip Kumar on 1.5.2009 and Tara Chand on 1.2.2008. It has also been admitted by Shri Yog Raj (RW-1) that when the petitioner, allegedly left the job, the department had engaged other beldars. He further clarified that on the order of the Court, the beldars had been engaged. In this way, from the evidence which has come on record, it is quite clear that the persons, junior to the petitioner, have been retained by the respondents. Since, the respondents have failed to prove, on record, that despite having been intimated to join the job, the petitioner had failed to resume his duties, it can be said that the petitioner has been able to prove that there has been violation of the provisions of section 25-G & H of the Act. Since, the petitioner has succeeded in proving that his juniors have been retained by the respondents, I am of the firm view that there has been non-compliance of the provisions of sections 25G & H of the Act, as per which, the services of the juniors were required to be disengaged than that of petitioner or in case some new persons were to be engaged, the petitioner was required to be given preference. It has been held by our own Hon'ble High Court, incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.* that :-

“Continuing of 240 days is not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

12. For my above discussion and law laid down by the Hon'ble High Court (supra), I have no hesitation in holding that the services of the petitioner had been terminated/disengaged w.e.f. August, 2005, illegally and in an unjustified manner and that too without complying with the provisions of the Act. Accordingly, my answer to this issue is in “Yes”.

Issue no. 2

13. Learned counsel for the petitioner has urged that the petitioner should be reinstated with all the consequential benefits including back wages. In number of judgments of Hon'ble Apex Court, it has been held that in the event of reinstatement of a worker, the grant of back wages is not automatic. *The Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla* has ruled that “*full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry*”.

14. Consequently, for what has been stated and observed above, the petitioner is held entitled to be reinstated in service with continuity and seniority but without back wages. Thus, my answer to this issue is in “Yes”.

Issue no. 3

15. For the respondents, it has been urged that the claim of the petitioner is not maintainable because he has failed to prove that in the twelve calendar months preceding his

termination, he had completed 240 days and further that, on his own, he had abandoned the job. While discussing the evidence, I have already arrived at this conclusion that the respondents have not succeeded in proving that the petitioner had abandoned his job. Although, it could not be proved by the petitioner that he had completed 240 days in the twelve calendar months preceding his termination but, on the record, it has been proved that the department had either retained juniors to him or engaged fresh hands, after his disengagement. In this way, when the petitioner succeeds in proving that there has been violation of section 25-G & H of the Act, his claim cannot be said to be not maintainable. Thus, by holding his claim to be maintainable, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is allowed and the petitioner is ordered to be reinstated in service forth-with with seniority and continuity but without back wages. Consequently, the reference stands answered in favour of petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 1st day of April, 2014.

A.S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF A.S JASWAL, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 114 of 2009.
Instituted on 2.9.2009.
Decided on 10.4.2014.

Tunnu Lal Yadav S/o Shri Ram Avtar yadav R/o Vilage & P.O Khera, Tehsil Nalagarh, Dsitrict Solan, HP.

..Petitioner.

VERSUS

The Factory Manager M/s Sidharatha Super Spinning Mills, Khera, tehsil Nalagarh, Dsitrict Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Sandeep Dadwal, Advocate
For respondent: Shri Rajeev Sharma, Advocate.

AWARD

The reference for adjudication is as under:

"Whether the termination of the services of Shri Tunnu Lal Yadav S/o Shri Ram Avtar Yadav by Factory Manager M/s Sidharatha Super Spinning Mills, Khera,

Tehsil Nalagarh, District Solan, HP w.e.f. 6.3.2006, on the basis of domestic enquiry and without affording adequate/sufficient opportunities in the domestic enquiry without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. The case of the petitioner is that in the year, 1987, he was appointed as Karigar by the respondent company. In the year, 1993, the Trade Union, namely AITUC, to which the petitioner was one of the members, had raised some demands in the interest of workers, which were legal and genuine. On account of the adamant attitude of the respondent company, the demands could not be resolved. Thereafter, when the matter was taken to this Court, it was compromised, somewhere, in the year, 2003-2004. It is alleged that after the compromise, the respondent company started harassing all the workmen, who were party to the compromise. Out of 58 workers, 50 were removed from job on the basis of frivolous allegations and fake enquires. On 10.10.2005, he (petitioner) was served with chargesheet -cum- suspension letter wherein it was alleged that on 9.10.2005, he was found sleeping, while on duty, on machine no.2, at about 2.50 AM. At that time, he had also misbehaved with Shri Shambhu Jobber. In order to explain his position, he was given 48 hours from the date of receiving the chargesheet. On 13.10.2005, he replied the chargesheet, which was found to be unsatisfactory. Upon this, the respondent company decided to conduct domestic enquiry against him through Shri Sanjeev Sharma, Advocate. Information regarding the domestic enquiry was served upon him vide communication dated 22.10.2005, by the enquiry officer. Through letter dated 22.10.2005, he had also been asked to appear for the enquiry, on 26.10.2005, in the security room, at about 2.00PM. On 4.11.2005, the petitioner brought one Shri Som Dutt, as his authorized representative but he was not allowed to engage him. Even, thereafter, said Som Dutt was never allowed by the enquiry officer during the proceedings of enquiry. He (petitioner) had also not been supplied with the day to day proceedings. Thus, he was not provided any opportunity of being heard. It is further alleged that the enquiry officer had closed the enquiry without having afforded an opportunity to the petitioner. Thereupon, he (petitioner) raised a demand notice dated 10.7.2006, which was replied by the respondent company. Since, the matter could not be settled, a reference was made to this Court by the appropriate government. It is further alleged that the petitioner had been illegally suspended by the respondent. Against this back-drop, a prayer has been made to direct the respondent to reengage him from 10.5.2005, with all the consequential benefits.

3. The petition has been contested, on having raised preliminary objections including maintainability. On merits, it has been asserted that a fair enquiry had been conducted against the petitioner as per the certified standing orders of the respondent. While conducting the enquiry, the enquiry officer had complied with the principles of natural justice by affording full opportunity to the petitioner. It is further alleged that the petitioner had refused to sign the proceedings and openly proclaimed that he would not allow these enquiry proceedings to continue. In this way, while indulging in grave misconduct, he had left the enquiry. It has been denied that the enquiry officer had not allowed Shri Som Dutt to defend the petitioner. In fact, said Som Dutt, had never appeared in the enquiry proceedings, as defense representative of the petitioner. Other allegations denied.

4. On the pleadings of the parties, the issues which had been framed on 7.7.2010, were recast on 15.12.2010, as under:

1. Whether the services of the petitioner have been terminated by the respondent management in an illegal manner without complying the provisions under Industrial Disputes Act, 1947, as alleged? ..OPP.
2. Whether this petition is not maintainable as alleged? ..OPR.
3. Relief.

5. Before, I proceed further, be it stated that on having been afforded several opportunities, the petitioner failed to lead his evidence and consequently, his evidence was closed by the order of this Court dated 10.4.2014. Since, the petitioner did not lead evidence, the respondent also did not lead evidence.

6. Besides having gone through the material on record, I have also heard the learned counsel for the parties.

7. For the reasons to be recorded hereinafter, my findings on the aforesaid issues are as under:

Issue no. 1	No.
Issue no. 2	No.
Relief	Reference answered against the petitioner and in favour of respondent per operative part of award.

8. The contention of the petitioner is to this effect that his services had been terminated, in an illegal manner, without complying with the provisions of the Act. It has been alleged by the petitioner that at the time of enquiry, he was not allowed to be defended by one Shri Som Dutt and also not afforded opportunity to lead his defence. On the other hand, the defence version is that the petitioner had never produced said Som Dutt at the time of enquiry and further that on having followed the principles of natural justice, the enquiry officer had conducted the enquiry against the petitioner.

9. In support of his contention that the petitioner had not been afforded opportunity to defend himself, during the enquiry proceedings, and further that the enquiry officer had not complied with the provisions of natural justice, no substantial evidence has been led by the petitioner. Since, it was upon the petitioner to prove that at the time of enquiry, he was not afforded opportunity to defend himself and further that Shri Som Dutt, to whom, he wanted to get engaged as his defence representative, was not allowed by the enquiry officer, I have been left with no other alternative but to hold that for want of evidence, he (petitioner) fails to prove this aspect of the matter. For his failure to lead evidence, in support of this issue, my answer to it is in "No".

Issue no.2.

10. Consequent upon the reference, which was made to this Court, by the appropriate government, the petitioner filed statement of claim. It is not understandable as to why this petition is not maintainable. Moreover, in support of this issue, no evidence has been led by the respondent. Resultantly, I hold this petition to be maintainable. Accordingly, my answer to this issue is in "No".

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and it is dismissed with the result, the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 10th April, 2014.

A. S JASWAL,
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**In the Court of Sub-Divisional Magistrate, Kalpa at Reckong-Peo,
District Kinnaur (H. P.)**

Case No. : 13/2014

Date of Institution : 15-5-2014

In the matter of :

Shri Vidya Pal s/o Shri Tulsi Dass, resident of Village Kalpa, P. O. Kalpa, Tehsil and, District Kinnaur, Himachal Pradesh
. . . *Applicant.*

Versus

General Public

Application under Section 13(3) of Birth and Death Registration Act, 1969.

Notice for publication in the Rajpatra of Himachal Pradesh.

The above named applicant has preferred an application supported by an affidavit in this Court under Section 13(3) of the Birth and Death Registration Act, 1969 stating therein that his son was born on 8-9-1999 but due to ignorance he could not get the birth of his son registered/recordeed in the records of Gram Panchayat Kalpa and now he intends to get the same registered/reorded in the records of Gram Panchayat Kalpa. Public notice inviting objections of the general public regarding entry of birth in the records of Gram Panchayat Kalpa on 31-5-2014, till the stipulated date *i. e.* 31-5-2014. Therefore notice is hereby issued to the general public through this publication that if anybody has any objection for the registration of birth of said son in Gram Panchayat Kalpa he/she may prefer his/her written or verbal objection before the undersigned within a period of one month *i. e.* before 31-5-2014 failing which it will be presumed that nobody has any objection for registration of birth in Gram Panchayat Kalpa and order under the Act *ibid* will be issued to the Local Registrar of Gram Panchayat.

Issued under my signature and seal of the Court today on 15th day of May, 2014 .

Seal.

Sd/-

*Sub-Divisional Magistrate,
Kalpa at Reckong-Peo, District Kinnaur (H. P.).*

**In the Court of Sub-Divisional Magistrate, Kalpa at Reckong-Peo,
District Kinnaur (H. P.)**

Case No. : 14/2014

Date of Institution : 15-5-2014

In the matter of :

Shri Gulab Sukh s/o Shri Sukh Bar, resident of Village Barang, Tehsil Kalpa, District Kinnaur, Himachal Pradesh
. . . *Applicant.*

Versus

General Public

Application under Section 13(3) of Birth and Death Registration Act, 1969.

The above named applicant has preferred an application supported by an affidavit in this Court under Section 13(3) of the Birth and Death Registration Act, 1969 stating therein that his father late Shri Sukh Bar s/o Shri Jitmua was expired on 3-3-2014 but due to ignorance he could not get the death of his father registered/recorderd in the records of Gram Panchayat Barang and now he intends to get the same registered/reorded in the records of Gram Panchayat Barang. Public notice inviting objections of the general Public regarding entry of death in the records of Gram Panchayat Barang on 3-3-2014, till the stipulated date *i. e.* 31-5-2014. Therefore notice is hereby issued to the general public through this publication that if anybody has any objection for the registration of death of said Sukh Bar in Gram Panchayat Barang he/she may prefer his/her written or verbal objection before the undersigned within a period of one month *i. e.* before 31-5-2014 failing which it will be presumed that nobody has any objection for registration of death in Gram Panchayat Barang and order under the Act *ibid* will be issued to the Local Registrar of Gram Panchayat.

Issued under my signature and seal of the Court today on 15th day of May, 2014 .

Seal.

Sd/-

*Sub-Divisional Magistrate,
Kalpa at Reckong-Peo, District Kinnaur (H. P.).*

**In the Court of Sub-Divisional Magistrate, Kalpa at Reckong-Peo,
District Kinnaur (H. P.)**

Case No. : 15/2014

Date of Institution : 15-5-2014

In the matter of :

Shri Rakesh Roshan s/o Shri Prakash Chand kapoor, resident of Village Khawangi, Tehsil Kalpa, District Kinnaur, Himachal Pradesh
. . . Applicant.

Versus

General public

Application under section 13(3) of Birth and Death Registration Act, 1969.

The above named applicant has preferred an application supported by an affidavit in this Court under Section 13(3) of the Birth and Death Registration Act, 1969 stating therein that his son named Jai Yash Kapoor s/o Shri Rakesh Roshan was born on 11-12-2011 but due to ignorance he could not get the birth of his son registered/recorderd in the records of Gram Panchayat Khawangi and now he intends to get the same registered/recorderd in the records of Gram Panchayat Khawangi. Public notice inviting objections of the general public regarding entry of birth in the records of Gram Panchayat Khawangi on 11-12-2011, till the stipulated dated *i. e.* 31-5-2014. Therefore notice is hereby issued to the general public through this publication that if anybody has any objection for the registration of birth of said son in Gram Panchayat Khawangi he/she may prefer his/her written or verbal objection before the undersigned within a period of one month *i. e.* before 31-5-2014 failing which it will be presumed that nobody has any objection for registration

of birth in Gram Panchayat Khawangi and order under the Act *ibid* will be issued to the Local Registrar of Gram Panchayat.

Issued under my signature and seal of the Court today on 15th day of May, 2014 .

Seal.

Sd/-

*Sub-Divisional Magistrate,
Kalpa at Reckong-Peo, District Kinnaur (H. P.).*

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla, Himachal Pradesh**

Shri Tenzin Dhonyo s/o Shri Tsering Lhundup, r/o House No. 12, Near Dhingu Mandir, Tibetan Coloney Sanjauli, Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Shri Tenzin Dhonyo s/o Shri Tsering Lhundup, r/o House No. 12, Near Dhingu Mandir, Tibetan Coloney Sanjauli, Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter his date of birth of Shri Tenzin Dhonyo s/o Shri Tsering Lhundup, r/o House No. 12, Near Dhingu Mandir, Tibetan Coloney Sanjauli, Shimla, Himachal Pradesh in the record of Birth and Death in the office of MC Shimla, Shimla (R) B&D has issued No. MCS/CHO13-494, Dated 30-4-2014 as following :

Sl. No.	Name of the family members	Relation	Date of Birth
	Tenzin Dhonyo	s/o Shri Tsering Lhundup	16-5-1977

Hence this proclamation is issued to the general public if they have any objection/claim regarding entry of date of birth of above in the record of MC Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 8-5-2014 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,
*Sub-Divisional Magistrate,
Shimla(R), District Shimla, Himachal Pradesh.*

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla, Himachal Pradesh**

Miss Tashi Lhamo d/o Late Shri Wangdu, r/o Tibetan Coloney Below Old Bus Stand, Shimla-1, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Miss Tashi Lhamo d/o Late Shri Wangdu, r/o Tibetan Colony Below Old Bus Stand, Shimla-1, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter her date of birth of named Miss Tashi Lhamo d/o Late Shri Wangdu, r/o Tibetan Colony Below Old Bus Stand, Shimla-1, Himachal Pradesh in the record of Birth and Death in the office of MC Shimla, Shimla (R) B&D has issued No. MCS/CHO13-461, Dated 17-4-2014 as following :

Sl. No.	Name of the family members	Relation	Date of Birth
	Miss Tashi Lhamo	d/o Late Shri Wangdu	1-12-1980

Hence this proclamation is issued to the general public if they have any objection/claim regarding entry of date of birth of above in the record of MC Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 12-5-2014 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,
Sub-Divisional Magistrate,
Shimla(R), District Shimla, Himachal Pradesh.

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla, Himachal Pradesh**

Shri Kamlesh Kumar s/o Late Shri Dmodar Dass, r/o Durga Bhawan Chaloulanti, Sanjauli, Shimla-6, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Shri Kamlesh Kumar s/o Late Shri Dmodar Dass, r/o Durga Bhawan Chaloulanti, Sanjauli, Shimla-6, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter his Step Mother's date of Death, named late Smt. Ganga Devi w/o Late Shri Damodar Dass, r/o Durga Bhawan Chaloulanti, Sanjauli, Shimla-6, Himachal Pradesh in the record of Birth and Death in the office of MC Shimla, Shimla (R) B&D has issued No. MCS/CHO14-493, Dated 30-4-2014 as following :

Sl. No.	Name of the family members	Relation	Date of Death
	Late Smt. Ganga Devi	w/o Late Shri Damodar Dass	14-6-2003

Hence this proclamation is issued to the general public if they have any objection/claim regarding entry of date of death of above in the record MC Shimla, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 12-5-2014 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,
Sub-Divisional Magistrate,
Shimla(R), District Shimla, Himachal Pradesh.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Smt. Surekha Rattan w/o Shri Pardeep Rattan, r/o Shop No. 29, Uppar Flat, Chotta Shimla,
Tehsil and District Shimla, Himachal Pradesh ..Applicant.

Versus

General Public

.. Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Smt. Surekha Rattan w/o Shri Pardeep Rattan, r/o Shop No. 29, Uppar Flat, Chotta Shimla,
Tehsil and District Shimla, Himachal Pradesh has preferred an application to the undersigned for
the registration of name of her son namely Prannoy Rattan whose date of birth is 5-8-1992 in the
record of Municipal Corporation Shimla, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person
having any objection for entry as to date of birth mentioned above, may submit his/her objection in
writing in this court within one month from the publication of this proclamation failing which no
objection will be entertained after expiry of date and the case will be decided accordingly.

Given under my hand and the seal of the Court on this 5th day of May, 2014.

Seal.

G. C. NEGI,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla, Himachal Pradesh.

**In the Court of Shri G. C. Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Smt. Dawa Dolma w/o Shri Pema Ngodup, r/o House No. 6, Tibetan Coloney, Sanjauli
Shimla, Himachal Pradesh ..Applicant.

Versus

General Public

.. Respondent.

Application under section 13 (3) of Birth and Death Registration Act, 1969.

Whereas Smt.Dawa Dolma w/o Shri Pema Ngodup, r/o House No. 6, Tibetan Coloney,
Sanjauli Shimla, Himachal Pradesh has preferred an application to the undersigned for the
registration of name of her daughter namely Phuntsok Yangzom whose date of birth is 30-1-1987
in the record of Municipal Corporation Shimla, District Shimla (H. P.).

Therefore, by this proclamation, the general public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his/her objection in writing in this court within one month from the publication of this proclamation failing which no objection will be entertained after expiry of date and the case will be decided accordingly.

Given under my hand and the seal of the Court on this 9th day of May, 2014.

Seal.

G. C. NEGI,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla, Himachal Pradesh.

ब अदालत कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार, चड़गांव, जिला शिमला (हि० प्र०)

श्री राजिन्द्र पुत्र श्री धर्म सिंह, निवासी तेलगा

बनाम

आम जनता

दरख्वास्त जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1869 हरगाह श्री राजिन्द्र पुत्र श्री धर्म सिंह, निवासी तेलगा, तहसील चड़गांव, जिला शिमला, हिमाचल प्रदेश ने दरख्वास्त समेत व्यान हल्फिया के गुजारी है कि प्रार्थी की पुत्रियों कुमारी मनिका की जन्म तिथि 4-7-2007 तथा पुजा की जन्म तिथि 11-5-2009 है। प्रार्थी अज्ञानतावश अपनी उपरोक्त पुत्रियों की जन्म तिथियां कार्यालय ग्राम पंचायत खरशाली में दर्ज न करवा सका।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस बारे यदि किसी व्यक्ति/रिश्तेदार को कोई उजर व एतराज हो तो वह अपना एतराज दिनांक 9-6-2014 को प्रातः 10.00 बजे इस अदालत में हाजिर आकर पेश कर सकता है अन्यथा एकतरफा कार्यवाही अमल में लाई जाकर उपरोक्त नाम व जन्म तिथियों का इन्द्राज ग्राम पंचायत खरशाली के परिवार रजिस्टर रिकॉर्ड में दर्ज करवाने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 9-5-2014 को हमारे हस्ताक्षर व मोहर सहित जारी किया गया।

मोहर।

हस्ताक्षरित /—
कार्यकारी दण्डाधिकारी एवं नायब तहसीलदार,
चड़गांव, जिला शिमला (हि० प्र०)।

**In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R),
District Shimla, Himachal Pradesh**

Shri Tota Ram s/o Shri Puran Chand, r/o Village Ganpari, P. O. Shogi, Tehsil and District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Shri Tota Ram s/o Shri Puran Chand, r/o Village Ganpari, P. O. Shogi, Tehsil and District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13 of the Birth and Death Registration Act, 1969 to enter his date of birth of named Shri Tota Ram s/o Shri Puran Chand, r/o Village Ganpari, P. O. Shogi, Tehsil and District Shimla, Himachal Pradesh in the record of Birth and Death in the GP Shogi (R) B&D has issued No. , Dated 16-5-2014 as following :

Sl. No.	Name of the family members	Relation	Date of Birth
	Shri Tota Ram	s/o Shri Puran Chand	31-12-1993

Hence this proclamation is issued to the general public if they have any objection/claim regarding entry of date of birth of above in the record of GP Shogi Jalail, may file their claim/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 20-5-2014 under my signature and seal of the court.

Seal.

GIAN SAGAR NEGI,
Sub-Divisional Magistrate,
Shimla(R), District Shimla, Himachal Pradesh.

CHANGE OF NAME

I, Subhash Chand Sharma s/o Late Shri Lalman Sharma, r/o H. No. 166, Sector 57, Mohali, Tehsil and District SAS Nagar, (Mohali) Punjab. have changed my name from Subash Sharma to Subhash Chand Sharma.

SUBHASH CHAND SHARMA
s/o Late Shri Lalman Sharma,
r/o H. No. 166, Sector 57, Mohali,
Tehsil and District SAS Nagar, (Mohali) Pb.